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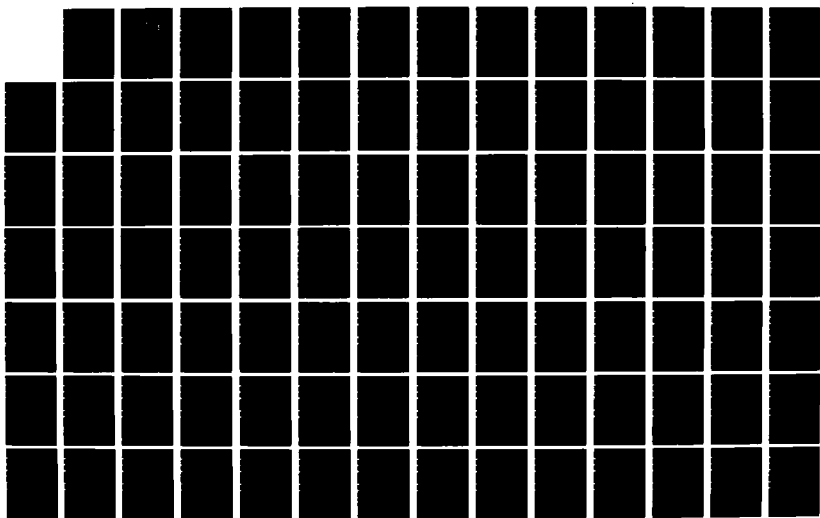
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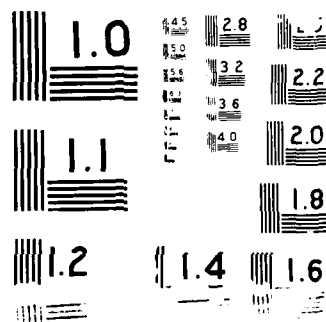
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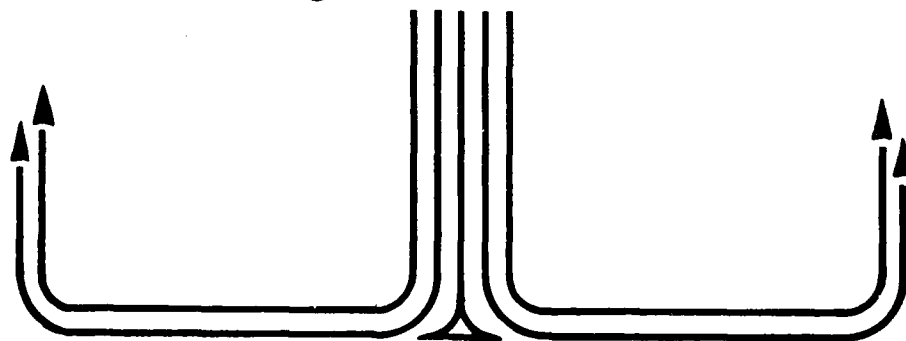
# AIR COMMAND AND STAFF COLLEGE

## STUDENT REPORT

PLAGIARISM AND PROSECUTION:  
A New Approach at Air University

MAJOR DAVID F. SHUTLER 88-2395

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**TITLE** PLAGIARISM AND PROSECUTION:  
A New Approach at Air University

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Submitted to the faculty in partial fulfillment of  
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## PREFACE

1. This manuscript has been submitted to *The Air Force Law Review* for consideration.
2. The text has been written in law review format, following *A Uniform System of Citation*, 14th edition, Harvard Law Review Association, 1986. The pronouns "he" and "his" are used in the generic sense to represent both genders.
3. The author appreciates invaluable assistance rendered by Lt Col H. A. Staley, ACSC/EDC, Maxwell AFB, Alabama; Lt Col Robert Grellman, ACSC/EDC, Maxwell AFB, Alabama; Colonel Thomas Springob, HQ AU/JA, Maxwell AFB, Alabama; Major Carol DiBattiste, Air Force Judge Advocate School, Maxwell AFB, Alabama; and Major David Pearson, Editor, *The Air Force Law Review*, Maxwell AFB, Alabama. He would also like to thank the faculty and staff of Air Command and Staff College, Maxwell AFB, who have been completely candid in their discussions of the plagiarism program, and his wife, Katie, who has been patient and supportive throughout.
4. The names of the officers whose cases are discussed in this paper were changed to afford them privacy. Transcripts of the cases are on file with HQ AU/XPZ, Maxwell AFB, Alabama.
5. This paper addresses the issue of plagiarism in the academic environment. Its impetus was the occurrence of three cases of plagiarism at Air Command and Staff College during a two month period in 1987. The faculty and staff questioned what could be done in the educational program to prevent plagiarism cases, and what procedures would facilitate their expeditious handling should they arise.
6. Following a brief historical and legal review of plagiarism, this paper makes an in-depth study of the nature of the problem, comparing the approach of various military academies and intermediate service schools. The recent cases of plagiarism at Air University are then examined for lessons to be learned. Based on these cases, the paper expounds three propositions: college faculties should decide on the definition of plagiarism and inform the student body; the definition should include the element of "intent" to pass off the work of another as one's own; and a "two track" approach should be used to differentiate inadvertent citation error from "intentional" plagiarism. The appendices provide regulation changes and guidelines needed to implement these proposals and deal with plagiarism cases that occur.



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## ABOUT THE AUTHOR

Major David F. Shutler graduated magna cum laude from Duke University in 1975 and was designated a Distinguished Graduate of the AFROTC program. After three years as an Avionics Maintenance Officer at Moody AFB, Georgia, he attended the Dickinson School of Law in Carlisle, Pennsylvania, under the Funded Legal Education Program. Upon graduation in 1981, he received the Corpus Juris Secundum Award for most significant contribution to the law school, and reported to Luke AFB, Arizona.

At Luke AFB, Major Shutler served as claims officer, chief of military justice, and area defense counsel before being selected to serve as Staff Judge Advocate at RAF Fairford, England in 1984. He returned from England to attend Air Command and Staff College in 1987. Major Shutler is a Distinguished Graduate of Squadron Officer School.

Major Shutler's published works include "The Prisoner Transfer Treaty with Turkey: Last Run for the 'Midnight Express'" in the Dickinson Law Review and "The Dickinson School of Law Brief Guide to Citation Forms." Following graduation from Air Command and Staff College, he will serve as Deputy Director of Military Law, Headquarters Strategic Air Command, Offutt AFB, Nebraska.



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REPORT NUMBER 88-2395

AUTHOR(S) MAJOR DAVID F. SHUTLER, USAF

TITLE PLAGIARISM AND PROSECUTION:  
A New Approach at Air University

I. Purpose: To define the nature of plagiarism in the academic environment, to formulate guidelines for faculty and students to deal with plagiarism, and to establish a means of differentiating inadvertent citation error from "intentional" plagiarism.

II. Problem: During the past two years four senior officers at Air University faced faculty boards for plagiarism on term papers. The boards were costly in terms of preparation time, aggravation, and careers. Two of the officers were disenrolled. The three boards at Air Command and Staff College showed the students were confused over citation methods and the faculty was in disagreement over whether the offense contains the element of "intent," and how to best deal with it. The cases highlight the need to clarify what plagiarism is, how it should be treated in an academic environment, and how to train students to avoid it.

III. Analysis: This paper traces plagiarism from its historical roots through its development as a legal cause of action in a lawsuit. Because of the different functions served by the offense of plagiarism in the publishing community and the academic environment, the paper advocates Air University diverge from the common law definition of plagiarism, which has no

element of "intent," and adopt a definition that incorporates "intent" as a key factor. The paper compares the approaches to plagiarism at three service academies and three intermediate service schools to arrive at an approach that combines the best of each system. This approach will help differentiate cases of inadvertent mistake in citation from intentional literary theft. To determine if a student did in fact intend to pass off the works of another as his own, an investigating officer would be trained to analyze circumstantial evidence and recommend an appropriate disposition of the case.

IV. Recommendations: Air University should clarify the offense of plagiarism by adopting a definition that includes the element of intent, and educate its students more fully on how to avoid it. Guidelines should be adopted to indicate how faculty members should advise students during the drafting stages of a paper and how to handle cases of suspected plagiarism if they arise. The appendices contain recommended changes to the applicable regulations and proposed guidelines for training students, faculty, and investigating officers. These proposals will greatly reduce confusion over plagiarism in the academic community and deal with it more effectively should it arise.

PLAGIARISM AND PROSECUTION:  
A New Approach at Air University

I. Introduction

Question: What do Auburn University quarterback Jeff Burger,<sup>1</sup> Senator Joseph Biden,<sup>2</sup> and the Reverend Jesse Jackson<sup>3</sup> have in common?

Answer: Allegations of plagiarism. Both Jeff Burger and Senator Biden admitted plagiarizing on term papers, and Reverend Jackson has had to defend his academic record.<sup>4</sup> As was widely reported in the national press, Senator Biden was obliged to withdraw from the presidential race shortly after the allegation surfaced.<sup>5</sup>

The subject has generated a great deal of controversy but is not widely understood.<sup>6</sup> Some people see it as a minor impropriety akin to double parking and others view it as morally offensive. There is much in print on the subject of plagiarism, but very little on dealing with it in the academic setting.<sup>7</sup> Yet, ignorance of it in an academic environment can have a major impact on a student's life.<sup>8</sup> In short, there is a problem with plagiarism in college.

Plagiarism is also a problem in military schools. In the past two years, three officers faced faculty boards for plagiarism at Air Command and Staff College (ACSC) and one was disenrolled.<sup>9</sup> In 1986, a lieutenant colonel was disenrolled from the Air War College (AWC).<sup>10</sup> Recently, a major at the Army Command and General Staff College (ACGSC) was expelled;<sup>11</sup> as was a lieutenant commander from the Naval Command and General Staff College (NCGSC).<sup>12</sup> Over the past two years in our service academies, seven cadets at West Point<sup>13</sup> and nine cadets at the Air Force Academy<sup>14</sup> were found guilty of plagiarism and resigned. As of this writing, one midshipman at the U. S. Naval Academy is under investigation for plagiarism.<sup>15</sup>

In addition to being widespread, the problem has been persistent. In the past five years there have been nineteen cases of plagiarism in the ACSC Associate Program. In December 1987, three more officers in the Associate Program were charged with plagiarism in connection with their course studies.<sup>16</sup>

When they arise in the Air Force, plagiarism cases are generally handled under Air University Regulation (AUR) 53-6, which establishes standards of academic integrity and defines

plagiarism.<sup>17</sup> The regulation applies to nearly half the total population of the Air Force including over 400,000 military members, civilians, and ready reserves enrolled in the various schools: Air War College,<sup>18</sup> Air Command and Staff College,<sup>19</sup> Squadron Officer School,<sup>20</sup> USAF Senior Noncommissioned Officer Academy,<sup>21</sup> Air Force Institute of Technology,<sup>22</sup> and Extension Course Institute.<sup>23</sup> Since Air Force members enrolled in any of these schools will be subject to the regulation, it behooves each of us to consider the cost of plagiarism.

#### A. The cost

The expense to the taxpayer of expelling military members from various schools has been considerable. The easily identified direct costs include the time and salary of the investigator, the faculty board members, the witnesses, the legal advisor, defense counsel, recorder, and court reporter for a two day hearing and whatever preparation time is required.<sup>24</sup>

The indirect costs of expelling a student are also significant. Take for example the lieutenant colonel disenrolled from the Air War College. The cumulative expense of his salary for unproductive time, the cost of instruction at the War College and the lost opportunity cost of a slot that went vacant, added to the cost of flight training that had been underutilized, yields a total loss of over \$500,000.<sup>25</sup> If the person had attended a graduate course through AFIT, the lost expenditure could exceed \$600,000.<sup>26</sup> This figure indicates the high cost of plagiarism to the Air Force.

The cost to the disenrolled member defies accurate assessment. Shattered career, lost self-esteem, and reduced productivity all figure in. For the lieutenant colonel, the cost also included a fine under Article 15 of the Uniform Code of Military Justice (UCMJ) for dereliction of the duty to cite properly.<sup>27</sup>

#### B. The controversy

The high cost of disenrolling plagiarists does not necessarily mean schools should cease doing it. The above figures only indicate the scope of the problem. The necessity to preserve the integrity of the institution, and to identify those with character deficits impels the school to expel those who violate the standard. But could they clarify the rules and better educate our members to avoid the problem? Could they more efficiently handle the cases of those who violate the rules? Could they somehow differentiate those who inadvertently failed to include a citation, from those who did so intentionally? The answers require a clear idea of the problem itself.

Plagiarism is a multifaceted problem because the offense occurs in both civil jurisprudence and the academic setting. Its underpinnings in the two arenas are significantly different. As will be more fully discussed below, the basic purpose of a civil lawsuit for plagiarism is to protect the creator of a work and thus encourage artistic endeavor. The purpose of the offense in the academic arena is to educate students in proper citation methods, teach the ethical reasons for citing a source, and identify those unable to do so. These divergent purposes call forth different approaches to plagiarism. The element of "intent" is not useful in the legal arena; but is essential in the academic one. Confusion over the element of intent has contributed to the controversy over plagiarism.

The controversy has also been exacerbated by an inability to arrive at a simple definition of "paraphrasing." Various style manuals admonish the student to reword, state in his own language, or rewrite a sentence, but fail to specify an acceptable standard of doing so. Is it permissible, for example, to reorder the same words, or substitute three of one's own words, or change all but five words, and still cite the sentence without using quotes? If a school's style manual is unclear on the matter, it's students cannot be expected to understand.

Another aspect of the controversy is the single sanction punishment for both intentional and inadvertent citation error. Since, at many schools, there is no distinction made between the two, a minor error can become amplified into a matter of integrity, and ultimately lead to disenrollment. For this reason, a "two track" approach is needed, with lesser punishments for unintentional or ignorant mistakes in citation, and more severe sanctions for "intentional" plagiarism. Distinguishing the two is the trick.

### C. The roadmap

This article first tackles plagiarism from historical and legal perspectives in the context of civil lawsuits. It then addresses plagiarism in the academic setting, by outlining the definition and procedures for handling it in various military schools. Next, the specific regulations governing the program at ACSC, and the four recent faculty board cases at Air University are reviewed. The article concludes with a summary of the lessons learned from the board cases and a number of recommended changes.

The means to implement the recommendations are included in the appendices. The first two contain applicable regulations and proposed changes to implement procedural improvements. Student and faculty guidelines in the next two contain simple citation rules and clearly delineated responsibilities for educating

students and dealing with infractions. The last appendix is a detailed guideline to help plagiarism investigating officers differentiate intentional from inadvertent citation error. The net effect should be better informed students and more equitable proceedings.



## II. Historical Background

### A. The Ancients

Through the centuries, many a noted author has been charged with plagiarism, or at least with "borrowing" from other sources. Many writers made no pretense of it. Lord Byron is quoted as saying, "commend me to a pilferer, you may laugh at it as a paradox, but I assure you the most original writers are the greatest thieves."<sup>28</sup> Byron subscribed to the school of thought that literary "borrowing" was "an integral part of the creative process."<sup>29</sup> Other great poets of antiquity shared this view.

Homer, who is considered a true original, "wrought the *Iliad* and the *Odyssey* out of the mass of myths and legends . . . that flourished around the Aegean in his day."<sup>30</sup> Yet Homer's borrowings could hardly be called plagiarism. "It was his imagination and organizing skill which imposed order on confusion, and fused disparate bits and pieces into sovereign entities."<sup>31</sup> The list of other ancient Greek writers who borrowed passages for their works, reads like a *Who's Who* of Athens. "Isocrates, Demosthenes, Aeschines, Menander and Plutarch indulged in it at times. Aristotle lifted whole pages from Democritus. . . . And Plato . . . annexed the earlier thought of Heraclitus, Empedocles and Pythagoras."<sup>32</sup>

As Roman armies conquered ancient Greece, its authors plundered Greek literature. "Roman writers considered a Latin adaptation from the Greek a new work, and did not always trouble to acknowledge their sources."<sup>33</sup> Even the great Virgil "copied the tale of Sinon and the taking of Troy almost word for word from Pisander, and the love story of Dido and Aeneas from that of Medea and Jason in Apollonius."<sup>34</sup> Yet Virgil's work was not without merit. Just as Homer refined the legends of the Aegean, Virgil refined the work he found. As W. H. Auden commented, "The *Iliad* is poetry of the highest order, but it is the poetry of barbarians, of a tribal culture; The *Aeneid* is the poetry of civilization, of world history."<sup>35</sup>

Then, as now, the concept of plagiarism was indefinite, and writers sometimes failed to disclose their sources. In his *Historia Naturalis*, Pliny the Elder observed, "In comparing various works with one another, I have discovered that some of the most eminent writers have transcribed, word for word, from other works, without acknowledgment."<sup>36</sup>

## B. The Elizabethans

Literary borrowing became an art in sixteenth century England. "The Elizabethans did not bother to devise plots, incidents, and characters; they lifted them from their predecessors and from each other."<sup>37</sup> Edmund Spenser borrowed liberally from Virgil, Homer, Plato, and Aristotle in his enduring classic *The Faerie Queene*.<sup>38</sup> And one critic of Milton alleged "one-half of [his] lauded passages are, from my own knowledge, felonies committed in the course of his reading on the property of others."<sup>39</sup>

Among the Elizabethan writers, Shakespeare is perhaps the most famous and the greatest target of source hunters. He was a working playwright with an ear for what would please his audience and he felt no compunction against borrowing a well-turned phrase, or two.<sup>40</sup>

There are speeches in Antony and Cleopatra which are pure Plutarch. Malone painstakingly analyzed Parts I, II, and III of Henry VI, and came to the conclusion that out of the 6,033 lines, Shakespeare had copied 1,771 intact, and had paraphrased 2,373 others, so that only 1,889 were entirely his own.<sup>41</sup>

Yet Shakespeare has stood the test of time and many of his sources only rate a footnote in the annotated versions of his collected works. His genius infused and surrounded their offerings and gave them wings. While his plagiarism cannot be gainsaid, his work is so monumental it stands despite the charges.

## C. The Americans

Like the Elizabethans, American authors were sometimes smitten by the plague of plagiarism. Edgar Allen Poe was a keen observer of style and became the most outspoken critic of literary theft. He condemned Longfellow's poem, *Midnight Mass for the Dying Year* as

... plagiarism which is too palpable to be mistaken, and which belongs to the most barbarous class of literary robbery: that class in which, while the words of the wronged author are avoided, his most intangible and therefore his least defensible and least reclaimable property is purloined.<sup>42</sup>

Poe's searching assessment of plagiarism, clarified its ethical ramifications. His incisive wit gave the argument sharp

edges, seeing theft of a product of the mind as a 'moral wrong' and 'the quintessence of meanness:'

The ordinary pick-pocket filches a purse, and the matter is at an end. He neither takes honor to himself, openly, on the score of the purloined purse, nor does he subject the individual robbed to the charge of pickpocketism in his own person. By so much the less odious is he, then, than the filcher of literary property. . . . It is the anomaly, the discord, which so gravely offends.<sup>43</sup>

This scorching condemnation of plagiarism is premised on the basic ethical concept of the immorality of theft. On the other hand, it could be argued that Longfellow's use of another's work, like Shakespeare, Spenser, Virgil and Homer before him, was premised on the appreciation of art. Each of these poets was an accomplished writer with genuine ability, so their inclusion of another's work in their own could be seen as an artistic effort to give wider audience to that which needed no improvement. Then again, it could also be seen as greed.

Much of this disagreement concerning the relative impropriety of plagiarism flows from a basic divergence of how ethics, art, and the law view it. 'Ethics is primarily concerned with intent. . . . It condemns [the writer] . . . if he steals knowingly . . . even where the taker has bettered the original.'<sup>44</sup> Art, on the other hand is unconcerned with intent. 'It addresses itself solely to the quality of the result. . . . It justifies any taking that yields a superior work.'<sup>45</sup> Finally, law discards both art and ethics, being less concerned with intent of the person or excellence of the product than with what is provable in court. It addresses the issue, 'has he copied a . . . substantial portion of copyrighted or copyrightable material?'<sup>46</sup> In the academic arena, aesthetics and ethics predominate; but in the courts, the law is king. So it is that in the academic setting, the primary consideration is intent, while in a civil suit, intent is immaterial.

#### D. Observations

This historical review calls forth several observations concerning plagiarism that help to define and clarify it.<sup>47</sup>

First, research and plagiarism are fundamentally different. A writer who familiarizes himself with the literature of the arena to more accurately describe the fight and make it live in the reader's mind is doing his sources one better, so long as he gives credit where it is due, and does not copy verbatim.

Second, derivation can be distinguished from copying another

work. The author who copies verbatim without giving credit is investing nothing of his store of knowledge and experience in the world thought bank. He is simply changing the name of the account holder on an existing account. In so doing he has committed literary theft, and in the most pernicious way. On the other hand, the author who derives his work from various sources and recombines them to give fresh meaning and applicability to another era's concerns is adding to the world thought bank and is to be commended.

Third, a minor lapse does not make an author a fake. History provides numerous examples of highly regarded writers who cribbed from others. Today their work is judged in its entirety and appreciated for its contribution. This perspective is useful when considering minor errors of citation in term papers. The work can be weighed in its entirety and judged on its net worth.

Finally, professional authors whose livelihood flows from the mouth of a pen are substantially different from students in a university. Students are asked to produce research papers so that their ability to think independently, solve problems rationally, and communicate persuasively can be evaluated. Professional authors are evaluated by their public and will rise or fall financially on their merit. When an author plagiarizes, he subjects himself to a lawsuit. When a student plagiarizes, he cheats himself and risks expulsion.

In order to afford writers greater protection from literary theft, state and federal legislators have enacted copyright laws. These laws allow wronged authors to sue the plagiarist in civil court and recover the ill-gotten gain. The various copyright laws were assimilated into a single comprehensive law applicable to all states and the federal government in 1976. That law is now the basis for action in the United States and is premised on the principles enumerated below.

### III. Civilian Legal Approach to Plagiarism

#### A. Legal Definition

A simple, working definition of plagiarism is "literary theft." The term derives from the Roman *plagium*, the criminal act of "stealing a slave from his master, or stealing . . . a freeman with intent to keep him or sell him as a slave."<sup>40</sup> The authoritative common law definition in *Black's Law Dictionary* is "the act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind."<sup>41</sup> In short, "taking the product of another's mind and presenting it as one's own."<sup>42</sup>

Plagiarism is akin to copyright infringement and piracy, but each offense has distinct elements.

Although the pirate and plagiarist share wrongful intent, "piracy" is not synonymous with "plagiarism." A pirate "makes no effort to falsify authorship, but reproduces and vends copies of a literary work without the author's permission."<sup>43</sup> The pirate shuns credit, preferring profit to acclaim. The offense of plagiarism engrafts the element of reaping, not only financial reward, but personal recognition from another's work.

Nor is "infringement" a synonym for "plagiarism,"<sup>44</sup> though they overlap. Copyright infringement consists of two elements: entitlement to copyright protection in the plaintiff; and the taking of that entitlement by the defendant through some form of copying.<sup>45</sup> "For purposes of plagiarism, the material stolen need not be in copyright; for infringement, it must be."<sup>46</sup> If a wrongdoer copies the copyrighted works of another, and presents them as his own, he has both plagiarized and infringed. If the work was not copyrighted or copyrightable, he has plagiarized.

Because of this overlap, and the provisions of the recently enacted federal copyright law, many cases of plagiarism are pursued as copyright infringements. For this reason, the new law will be discussed in some detail.

With the enactment of the Copyright Act of 1976 (the Act),<sup>47</sup> Congress established a comprehensive federal plan "to recognize and protect the rights of 'authors' in their intellectual works and thus supply the incentive for the creation and dissemination of such works."<sup>48</sup> Congress acted under constitutional

authority,<sup>87</sup> and in so doing, it preempted the field as to statutory copyrights.<sup>88</sup> Thus, any actions for copyright infringement must be brought under the provisions of the Act, rather than state law or common law.

## B. Lawsuits for Copyright Infringement

The Act has broad protections for authors whose works are appropriated without credit. Willful copyright infringement for commercial advantage or private financial gain subjects the wrongdoer to severe criminal and civil sanctions. In the criminal case the infringer faces fines up to \$25,000 and imprisonment for one year; and in the civil action he could be enjoined from further infringement, ordered to pay money damages of up to \$10,000 per infringement, and required to destroy all infringing copies.<sup>89</sup>

To be successful in a civil tort action for copyright infringement, the plaintiff must prove two basic elements: "copyright entitlement" on his part, and "an appropriation of that entitlement by *some form of copying*" on the defendant's part.<sup>90</sup> Under the Act, the copyright "attaches" when the creative work is "fixed in any tangible medium of expression,"<sup>91</sup> so "publication" of the work is no longer required.

To claim *copyright entitlement* in a federal court, the plaintiff must prove

. . . originality, copyrightability, proper registration, and authorship. . . . However, the copyright registration certificate constitutes prima facie evidence that plaintiff possesses these incidents of ownership and upon its admission into evidence the burden shifts to the defendant to disprove entitlement to statutory copyright protection.<sup>92</sup>

Without the registration certificate, the plaintiff would rely on circumstantial evidence to show his original authorship and on the Act to show the work was copyrightable.<sup>93</sup>

The more daunting task is proving the defendant copied the work. *Copying* includes "the various modes in which the matter of any publication may be adopted, imitated, or transferred with more or less colorable alterations to disguise the [theft]."<sup>94</sup> Verbatim copying need not be proven because "alteration for the sake of disguise . . . is one of the hallmarks of plagiarism."<sup>95</sup> However, "when copying is verbatim the matter is settled. Defendant has infringed unless he can show that his copying constitutes 'fair use' of plaintiff's work."<sup>96</sup>

If the offending work is not a verbatim lift, the plaintiff can make a prima facie case of copying by proving the defendant's access and the *substantial similarity* between the works. Since defendants rarely admit access, it must be proven by circumstantial evidence and inference.

For example, evidence that plaintiff's work was widely circulated or that defendant's work was composed with inexplicable speed has been held to raise an inference of access. Moreover . . . access will be inferred where the similarities between two works are so striking that independent creation seems highly unlikely.<sup>67</sup>

On the other hand, if the defendant can show the similarities are actually coincidental and that he independently created the work, he can avoid liability for infringement. Defendant's burden of proof on this issue is heavy; that he has plagiarized subconsciously is no defense; he must show independence.<sup>68</sup>

Once access is shown or inferred, the key issue of *substantial similarity* arises. A rule of reason applies here, and courts generally look to 'quality and value, rather than length' to determine substantiality.<sup>69</sup> 'Copyright protection extends only to the expression of the idea; it does not protect the idea itself.'<sup>70</sup> So to convince the court of substantial similarity 'the plaintiff must show that the defendant's work is so similar to his own that [one] may reasonably infer copying.'<sup>71</sup>

Actual unauthorized use of the plaintiff's property is a prerequisite to a finding of infringement; and only when the similarity between two works is great can a court be certain that this prerequisite is satisfied.<sup>72</sup>

Thus infringement cases often turn on the issue of substantial similarity. By it, the courts will infer access, and the plaintiff can prove copying in instances of paraphrased or other nonliteral use.

### C. Lawsuits for Plagiarism

As noted above, the tort action for plagiarism remains viable at common law, but is limited to use in cases involving unpublished works. 'At common law, an author has a property right in his unpublished manuscript and can obtain redress . . . against anyone who obtains a copy and endeavors to realize a profit by its publication through plagiarism or otherwise.'<sup>73</sup> In deciding these cases, a court would look to the same factors as enumerated above for infringement cases: access, copying, copyrighted or copyrightable material, and substantiality of the

copying.<sup>74</sup>

These elements make up the case a plaintiff must prove to recover money damages for plagiarism or infringement in a civil court. The reader will note that no element of 'intent' is required to be proven in civil court.<sup>75</sup> In a criminal proceeding, however, the prosecutor would need to show the infringement was intentional or 'willfull,' and 'for purposes of commercial advantage or private financial gain.'<sup>76</sup> In the civilian legal system, the element of wrongful intent boosts the case into the criminal arena and subjects the wrongdoer to the severe penalties noted above. This outlook of punishing wrongful intent is reflected in the handling of plagiarism in the various military schools.

It is helpful to keep the elements of the civilian legal system in mind as we consider the requirements of the academic setting, and the handling of plagiarism at Air University.



#### IV. Various Military Schools' Approach to Plagiarism

##### A. The Academic Setting

The academic setting is fundamentally different from the business of publishing for profit. School provides an evaluating process in which the currency is grades and class standing, not financial return. School also provides training in ethics and character, while business assumes them and acts upon them. Lastly, school grants an imprimatur, in the form of a diploma or degree, which business can rely on as proof of ability. Academic institutions require a definition of plagiarism to serve this basic charter of training, evaluating, and certifying. That definition must necessarily differ from the legal definition used in business. To hold students liable for literary theft when they inadvertently use the wrong citation format would serve no useful end.

Because of the very different purposes served by the civilian legal code and a university's academic code, the element of intent must be included in the academic definition of plagiarism. The definitions of plagiarism in the six institutions addressed below do not specifically include the word "intent," but it is fairly implied. A better course of action would be to include the word to prevent any confusion.

In the military, because of the high standard of integrity required of professional officers and noncommissioned officers, plagiarism is handled as an offense that can lead to both administrative action such as disenrollment or discharge, and nonjudicial action under Article 15, UCMJ. To explore this area, the paper will address the definitions and handling of plagiarism at six service schools: the U. S. Military Academy, the U. S. Air Force Academy, the U. S. Naval Academy, the Armed Forces Staff College, the Army Command and General Staff College, and the Naval Command and Staff College.<sup>77</sup>

##### B. United States Military Academy at West Point

The cadet honor code states "a cadet will not lie, cheat or steal, nor tolerate those who do."<sup>78</sup> Plagiarism is handled under the rubric of "cheating" which involves such acts as presenting one's own work dishonestly. Cadets are admonished to "clearly and unambiguously indicate any portions of their

work which are not solely their own."<sup>79</sup> Specifically, "they must clearly and completely document all sources of information and all forms of assistance. To do this, one uses parenthetical documentation, bibliographies, and acknowledgement statements."<sup>80</sup> Paraphrases express "the idea or concept of the original source in a cadet's own words and [require] parenthetical documentation," for which the cadet is referred to *The Style Manual*.<sup>81</sup>

If a cadet is suspected of plagiarism, the Regimental Honor Representative conducts an initial inquiry and if the evidence substantiates further action, appoints an Investigative Team comprised of two members of the Honor Committee to recommend either dismissal or referral to the Full Honor Investigative Hearing (FHIH).<sup>82</sup> In preparation for this, a Hearing Officer conducts a preliminary hearing without defense counsel present, at which the accused may raise objections and challenges. At the FHIH, twelve voting members determine guilt or innocence by a 5/6th majority vote.<sup>83</sup> The board results are reviewed by the Commandant, Superintendent, and Secretary of the Army. If guilty, the cadet receives an "F" in the course and is separated from the Academy, although the Superintendent may exercise discretion.<sup>84</sup>

In the academic year 1986-87, some 50 cases of all types went before Honor Committee hearings. Of these, 13 were related to cheating and of those, 6 involved plagiarism.<sup>85</sup> In these cases, the sole purpose of the board hearing was to determine if the cadet intended to pass off someone else's work as his own. In a recent case, a cadet was found guilty of copying *Cliff's Notes* into a 10 page paper without any citation to the source.<sup>86</sup>

#### C. United States Air Force Academy at Colorado Springs

The Air Force Academy's honor code declares: "We will not lie, steal, or cheat, nor tolerate among us anyone who does,"<sup>87</sup> and classifies plagiarism as cheating.<sup>88</sup> The cadet's *Honor Code Reference Handbook* defines it as "the use of [the ideas and words of others] in an attempt to pass them off as your own."<sup>89</sup> Cadets are given a briefing, and a four page handout to assist them in properly documenting sources.

The handout defines the means of citation specifically. Quotation is presenting "another writer's idea in his exact words."<sup>90</sup> Paraphrase is "another writer's idea," restated "in your own words" following "the pattern of the original wording."<sup>91</sup> Summary is "the core of [another writer's] idea," condensed and reworded.<sup>92</sup> Cadets must use quotation marks for borrowed words and footnotes or parenthetical documentation for summaries and paraphrases.<sup>93</sup>

Students are cautioned against *blanket footnotes* since a

footnote number "generally covers only the preceding sentence; *misattributed borrowing* that arises when you fail to "attribute the material you borrow to the source you actually use;" and *padded bibliography* that "gives the appearance you've done more work than you actually have."<sup>94</sup>

USAFA investigative procedures are akin to West Point's. An informal investigation is run by the cadet Investigative Team, comprised of one first class and one second class cadet, that acts similarly to the Regimental Honor Representative and determines preliminarily if a violation occurred.<sup>95</sup> If they conclude there is sufficient basis for further action, an Honor Investigative Panel "decides whether a potential honor violation may have been committed and, if so, forwards the case to a Wing Honor Board"<sup>96</sup> comprised of one officer (O-4 or above), two at-large cadets, two cadets in the cadet chain, and three honor representatives.<sup>97</sup>

To be found guilty of a violation, three quarters of the Wing Honor Board must be convinced "beyond a reasonable doubt" that the cadet committed the act.<sup>98</sup> This burden of proof is noteworthy because it applies the standard of proof normally required only in *criminal* proceedings, to an *administrative* hearing. In effect, this accords more protection to the accused.

If a cadet is found guilty, the case is referred to an Honor Sanctions Board comprised of three colonels (O-6) and two cadets for imposition of sanctions in lesser cases, and recommendations of suspension or disenrollment in more severe cases.<sup>99</sup> The cadet may then request a Hearing Officer be assigned under AFR 53-3 to determine if the "cadet engaged in the misconduct alleged."<sup>100</sup> Based on a review of all the previous actions, the Academy Board then makes a determination if the cadet is qualified for graduation.<sup>101</sup> If not, the case is forwarded to the Secretary of the Air Force who either discharges the cadet or calls him to active duty in an enlisted status.<sup>102</sup>

Recent Air Force Academy statistics on plagiarism indicate that in the past two years seventeen cases of plagiarism were investigated, with three cases dropped, five cases found not in violation of the honor code, and nine cases found in violation at the Wing Honor Board.<sup>103</sup>

#### D. United States Naval Academy at Annapolis

At the Naval Academy, plagiarism is handled as a subset of cheating under the Honor Concept that "a midshipman does not lie, cheat, or steal."<sup>104</sup> *Naval Academy Instruction 1610.3c*, dated 21 August 1982, defines it as follows: "Plagiarism is the submission of another's work, whether published or unpublished, or ideas by claiming them as one's own and not giving proper

reference to that work.<sup>105</sup>

The *Instruction* then refers midshipmen to James D. Lester's book *Writing Research Papers*, 3rd ed. (Glenview, Ill.: Scott, Foresman and Co., 1980) at page 49 for basic rules:

1. Acknowledge borrowed material within the text by introducing the quotation or paraphrase with the name of the authority from whom it was taken.
2. Enclose within quotation marks all quoted materials.
3. Make certain that paraphrased material is written in your own style and language. The simple rearrangement of sentence patterns is unacceptable.
4. Provide a footnote for each borrowed item.
5. Provide a bibliography entry for every book or magazine that appears in the footnotes.<sup>106</sup>

The *Instruction* then deals with proving the element of intent in a plagiarism case:

A guilty state of mind may be established either by direct evidence (for example, by words proved to have been used by the accused expressing an intent) or by indirect evidence; i.e., from the circumstances surrounding the alleged honor violation from which one might, according to the common experience of mankind, reasonably infer the existence of an intent.<sup>107</sup>

This discussion of intent is noteworthy because it clarifies for faculty and students alike that intent is a state of mind that may be proven by direct and circumstantial evidence.

USNA investigative procedures differ somewhat from the Military Academy's. After a preliminary screening by the Brigade Honor Chairman, alleged violations are referred to a midshipman investigating officer who prepares the case for presentation.<sup>108</sup> Underclass cases (all but First Class) are heard by a Class Investigating Board comprised of five Company Honor Representatives from companies other than the accused, with various nonvoting advisors.

The Class Investigating Board recommends either termination of the case or continuation to a full Brigade Honor Board.<sup>109</sup> First Class cases are heard directly by the Brigade Honor Board which is composed of five first class Company Honor Representatives, the Brigade Commander or his Deputy, and one Class Officer (President, Vice President, etc.) from each of the other three

classes.<sup>110</sup> Following the hearing, an officer representative, the Commandant and the Superintendent each review the proceeding for fairness, with the Superintendent having authority to mitigate.<sup>111</sup>

If convicted, the midshipman will normally receive an 'F' in the course, and may be placed on probation by the commandant or superintendent, or discharged for unsatisfactory conduct by the Secretary of the Navy.<sup>112</sup> The superintendent may allow the midshipman to submit a qualified resignation of his appointment rather than be discharged.<sup>113</sup>

In the past year there has been only one reported case of plagiarism and that case is still under investigation. Since 'case studies of previous cases are not normally made available to persons outside the Brigade of Midshipmen,' detailed discussion of cases is not possible.<sup>114</sup>

From this brief review several facts are apparent. Each of the service academies provide procedural safeguards for the accused and extensive mechanisms to determine the facts of a given case. Each school defines plagiarism and paraphrasing differently and gives guidance on how to avoid it. But none of the academies specify what constitutes a paraphrase other than restatement 'in your own words.' This vagueness could lead to charges of plagiarism and for this reason a simple rule is proposed at appendix 3: if the reworded sentence contains consecutive five words verbatim from the original, they should be quoted.

Having outlined approaches taken by the service academies, it is appropriate to turn to the definitions and procedures for plagiarism at various intermediate service schools and review recent cases.

#### E. Army Command and General Staff College

At the Army Command and General Staff College (ACGSC) in Fort Leavenworth, Kansas, plagiarism is addressed under academic ethics in the *College Catalogue*:

Academic ethics is the application of ethical principles in the academic environment, giving and receiving only authorized assistance and conducting legitimate research and properly attributing credit to sources of information.<sup>115</sup>

Plagiarism is defined as 'the presentation of another's writing or another's ideas as one's own.'<sup>116</sup> The *Catalogue* goes on to point out that 'plagiarism covers more than copying another's work word for word. The unattributed use of only a portion of another's work constitutes plagiarism.'<sup>117</sup> citing as the source

*Writing With a Purpose*, 4th Ed., by James M. McCrimmon.

This definition applies to all four schools at Fort Leavenworth: the Command and General Staff Officer Course, the Advanced Military Studies Course, the Combined Arms and Services Staff School, and the School for Professional Development, which have a combined annual enrollment of over 11,000 people.<sup>118</sup> The requirement for research papers varies among the schools, but the ACGSC standard is four papers totalling 3 to 8 pages in length.<sup>119</sup>

Procedurally, any alleged violations are heard by an Academic Board, after the school registrar confronts the member with the evidence, reads his Article 31, UCMJ rights, and gives him an opportunity to explain the circumstances.<sup>120</sup> The registrar then acts as the Recorder for the Academic Board, assembling the evidence and presenting the case. The Board makes a recommendation to the Commandant on guilt or innocence and action to be taken.<sup>121</sup>

Historically, the ACGSC has averaged two to three cases per year.<sup>122</sup> In academic year 1987, the Academic Board heard two cases, one of which resulted in disenrollment from the school and discharge from the Army. Despite the student's denials, the evidence showed that over 90 per cent of his paper was a verbatim lift from an instructor's unpublished work. Unfortunately for the student, his faculty grader was the original author's roommate.<sup>123</sup> The egregious nature of this offense led to severe punishment, but in other cases a more lenient approach was taken. If the circumstances warranted it, the guilty party was not disenrolled or discharged, but received an unsatisfactory grade, was obliged to reaccomplish the paper, and was introduced to his gaining commander with a letter explaining the circumstances.<sup>124</sup> In short, the outcome depended on the facts of the case.

#### F. Naval Command and General Staff College

In marked contrast with the Army CGSC procedures, the Naval Command and General Staff College (NCGSC) at Newport, Rhode Island, has no written definition, policy, or student handbook discussion of plagiarism. The approach of the Academic Department was that at this point in their professional careers officers do not need further guidance on plagiarism.<sup>125</sup> This perspective is interesting in light of the writing requirement of the NCGSC consisting of four 8 to 10 page papers, and one 20 to 25 page paper.<sup>126</sup>

If the matter should arise, an Academic Board is convened, comprised of the Academic Dean, the Deputy to the President and the Academic Advisor to the President. This panel simply uses

the dictionary definition of plagiarism.<sup>127</sup> This approach may be open to debate, but is evidently supported by the record of infractions, which shows only one case being heard in the past two years. That one resulted in a disenrollment when the student admitted he had been rushed and had lifted his work from another's paper. Since he had violated professional and intellectual integrity, he was expelled.<sup>128</sup>

#### G. Armed Forces Staff College

Like the Naval Command and General Staff College at Newport, the Armed Forces Staff College (AFSC) at Norfolk has no written procedures on how to handle violations.<sup>129</sup> Plagiarism cases are handled like academic failure cases, by referral to a Policy Advisory Board consisting of the Dean and the senior service representatives, for a recommendation to the Commandant as to disenrollment.<sup>130</sup>

Unlike the NCGSC, the Armed Forces Staff College has extensive assistance available to students. The writing requirement consists of one 8 to 10 page term paper<sup>131</sup> and the students are given thorough guidance on how to avoid plagiarism in Volume 1 of the *Student Guidance* book.

The basic rule is that direct quotations, paraphrased material, and summaries must all be footnoted.

A quotation is a passage employing another's words exactly as written. The quotation is set off from your own text by quotation marks or by indenting five spaces on both sides and by single spacing (with no quotation marks) in cases where five or more lines are involved.<sup>132</sup>

A paraphrase is defined as "a restatement of another's ideas in one's own words, with the original and the paraphrase about equal length," while a summary is "a condensation of a longer passage written by another."<sup>133</sup> The *Guidance* points out "if you are using borrowed material, or even a single fact not commonly known, and even when expressing it in your own words, you must nonetheless indicate the source."<sup>134</sup>

The Armed Forces Staff College Guidance then adopts a modified version of the rules of citation from *Writing Research Papers*, 2nd Edition, by James D. Lester which were cited in the section on the U.S. Naval Academy.<sup>135</sup>

Finally, the Student Guidance refers writers to *The Little, Brown Handbook*, 3rd Edition, pp. 570-575 for examples of acceptable and unacceptable paraphrasing.<sup>136</sup> This approach gives the student concrete assistance in writing papers and offers much in

the way of useful information.

In the past 30 months there have been very few allegations of plagiarism, and no case has gone before the Policy Advisory Board. The school recognizes a distinction between sloppy citation which has no element of intent, and plagiarism, for which intent must be proven.<sup>137</sup> The cases that have arisen were determined to be poor documentation, rather than intentional taking and were resolved by awarding a grade of "inadquate" and requiring reaccomplishment.<sup>138</sup>

As is evident from this discussion, much can be learned from an analysis of the service academies and the intermediate service schools akin to Air Command and Staff College at Air University. Particularly noteworthy is the approach by the Armed Forces Staff College, which has an extensive training program and has had very few infractions.



## V. Air University's Approach to Plagiarism

### A. Definition: AUR 53-6

Air University (AU) regulates plagiarism through AUR 53-6, on Academic Integrity, which defines plagiarism using the legal definition from *West's Law Dictionary*:

The act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind.<sup>139</sup>

The regulation gives as examples of plagiarism "copying verbatim without quotation marks" and "use of a source's sentence structure and style with only minor word changes."<sup>140</sup> These examples are somewhat misleading in that quoted material exceeding five lines may be indented without quotation marks,<sup>141</sup> and the word "minor" is not clearly defined. In appendix 2, are recommended changes to clarify this definition and eliminate the examples.

AUR 53-6 gives specific guidance for crediting a written source: "use quotation marks and an accompanying footnote when quoting directly and a footnote when paraphrasing."<sup>142</sup> This guidance is supplemented at each school by handbooks such as *Tongue and Quill*, *Tongue and Quill Workbook*, and *Research Handbook*, which give more detailed requirements for citation. At appendix 3, is a recommended update to the *Research Handbook* and appendix 2 contains proposed changes to AUR 53-6.

### B. Procedures at AU: AFR 50-5

The regulation authorizing Air University to deal with plagiarism is AFR 50-5, which gives specific responsibility to the Commander of Air University to "appoint a commandant of each school within the command,"<sup>143</sup> to "appoint a faculty board, and [to] determine board procedures within the scope of applicable Air Force Regulations."<sup>144</sup> The regulation further tasks the Commander to "ensure that each faculty board proceeding which recommends disenrollment of a student is reviewed for completeness, standardization, [and] clarity . . . ."<sup>145</sup>

Under AFR 50-5, the commandant of the school is empowered to direct the faculty board to meet<sup>146</sup> and to appoint the membership

of the board. "Any combination of commissioned officers [may be appointed] . . . provided that each military member outranks the student whose case is before the board."<sup>147</sup> The commandant also has authority to convene the board for special purposes such as "academic deficiency," "military training deficiency," and "related matters."<sup>148</sup>

It is noteworthy that "lack of academic integrity" is not enumerated *per se* as a basis for convening a board. Evidently, the term "related matters" is read broadly to encompass plagiarism as a basis for board action. This procedural anomaly is addressed in appendix 2.

AFR 50-5 leaves the purpose and scope of the faculty boards at the various schools within Air University to be delineated by that school's regulations. At Air Command and Staff College, the faculty board functions are outlined in ACSC Regulation 53-10, dated 28 October 1986. Essentially, the board is directed to "make findings of fact and recommendations for ACSC/CC regarding the continued enrollment of [a] student."<sup>149</sup>

Once convened, the board proceedings must comply with the procedural requirements of AFR 11-31, governing hearings by boards of officers, since they will "inquire into the conduct, efficiency . . . [or] fitness . . . of the student as a member of the Air Force."<sup>150</sup>

#### C. Procedures at AU: AU Sup 1 to AFR 50-5

At Air University, AU Supplement 1 implements AFR 50-5. The supplement delegates authority to commandants of schools to convene a faculty board hearing "in any instance where a student fails to meet the minimum academic requirements."<sup>151</sup> In contrast, violations of academic integrity require only summary proceedings. The commandant may "disenroll students by administrative action," that is, without convening a board, "when a student violates AU policy on academic integrity as defined in AUR 53-6."<sup>152</sup> This provision is a tool for commandants to deal expeditiously with cases of academic integrity.

#### D. Procedures at AU: ACSCR 53-10

The distinction between using administrative disenrollments for lack of integrity and faculty boards for academic failure is maintained in Air Command and Staff College Regulation 53-10. After discussing the purpose and scope of faculty board actions, paragraph 4 concludes with the advisory: "NOTE: Administrative disenrollment is an alternative to faculty board action (reference AFR 50-5 and AFR 50-5/AU Sup 1)."<sup>153</sup> The references

indicate a consistent policy of permitting summary action for lack of academic integrity.

The discussion of possible punishments for violating academic integrity in AUR 53-6 gives further impetus to the idea of handling plagiarism cases outside of faculty board proceedings. Paragraph 2 contains a clear warning that "individuals who violate this regulation will be subject to adverse administrative and/or disciplinary action. Cases involving military personnel . . . may be handled as a violation of Article 92, UCMJ." 154

Since Article 92 is specifically cited, it would seem the drafter intended to allow plagiarism cases to be handled in the Article 15 forum, as either dereliction of the duty to cite properly or as a violation of a general regulation. That interpretation is buttressed by the fact that offenses under Article 92 do not include the element of intent, and therefore would be significantly easier to prove. Nonetheless, there is adequate authority for a commandant to elect a faculty board as the forum to hear a plagiarism case, and this course would be desirable whenever the issue of intent required an in-depth examination.

Commandants at Air University have wide latitude to deal with plagiarism. By inherent authority, they may appoint an investigating officer (IO) under AFR 120-4. Based on the IO's finding, they may choose to issue an oral or written reprimand, or impose punishment under Article 15 for dereliction of the duty to cite properly or for violating a lawful general regulation. They may choose to simply disenroll a student by administrative action without convening a board, or convene a faculty board under AFR 50-5 to examine the circumstances and make recommendations as to disenrollment from the school.

Based on the conclusions of the faculty board, the commandant may initiate discharge proceedings under AFR 36-2 for officers or AFR 39-10 for enlisted personnel. If they elect to let the student complete the school, they may make explanatory comments on the student's AF Form 475 Training Report. Given the wide range of options available, a recommended procedural guideline for faculty has been included at appendix 4 and one for investigating officers at appendix 5.

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## VI. Recent Plagiarism Cases at AU

### A. Preliminaries

Having discussed the handling of plagiarism in civilian legal systems, various service academies, sister service schools, and Air University, it is appropriate to analyze four recent plagiarism hearings to assess how to better educate students and faculty so as to avoid plagiarism and how to deal with the element of intent.

Each of the hearings occurred in the past two years and the records consist of a verbatim transcript with attached exhibits. The original transcripts are on file with HQ AU/XPZ. To protect the privacy of the officers involved, names have been altered. After a brief summary of the facts and the findings of the board, the cases will be analyzed for lessons learned.

### B. Admitted Plagiarism: Lt Col Byron

In early April, 1986 as part of his course work for the Air War College, Lt Col Marc Byron (hereafter called respondent) submitted a paper on strategy that would comprise 25 percent of his grade. The faculty seminar leader read it and concluded it was one of the top 3 papers in the seminar and should be evaluated for a rating of superior.<sup>156</sup> As part of that process, an expert in the field reviewed the paper and noticed similarities with a published work on low intensity combat by a noted author. Upon comparing the works, he found 80 percent of the paper was a verbatim lift from that piece and two books, with none of the passages footnoted or otherwise referenced.<sup>157</sup> Upon being presented with the evidence and read his rights, the respondent admitted plagiarizing.<sup>158</sup>

At his hearing on 18 April 86, responding to the query as to why he plagiarized, he admitted letting his priorities slip as he prepared to PCS to his upcoming assignment.<sup>159</sup> In addition, he rationalized that since he had done a large amount of reading and research, he had "gotten out of the experience what was really important, and what remained was to regurgitate it back to fill a requirement."<sup>160</sup>

Why did he not just cite the books? "I should have taken the time to do it. I spent a lot of time putting it together. I

had the materials . . . available on my notes."<sup>150</sup> Was there intent to pass it off as his own? "I had decided in my own mind to directly copy verbatim from the book to the paper, and I . . . made a conscious effort to plagiarize."<sup>151</sup>

The only issue before the board was whether he should be disenrolled from the school for his plagiarism. Respondent's counsel argued that his outstanding career up to that point mitigated in favor of retention in the school and that the act was an aberration.<sup>152</sup> The government representative argued that this breach of integrity disqualified the respondent from being allowed to graduate.<sup>153</sup> After deliberating an hour and a half, the board found respondent had plagiarized, and as such had violated the Air University policy on academic integrity as defined in AUR 53-6. Therefore, it recommended he be disenrolled from Air War College.<sup>154</sup>

The respondent was subsequently punished under Article 15, UCMJ for dereliction of the duty to cite and fined \$200.00. He was also denied a below-the-primary-zone promotion to colonel, and obliged to retire.<sup>155</sup>

#### Analysis

1. Proving intent. This case is a rare example of an outright admission of intent to plagiarize. The proof problems normally inherent in plagiarism cases dissolve when the respondent admits guilt.

2. Fairness of result. The outcome is appropriate in that it would be inconsistent with standards of officer integrity to permit a person who had passed off the work of another as his own to graduate from the school. In this instance the respondent had a character deficit that came to the surface and was detected. The careerist mentality of punching the ticket on the way to the top came face to face with a higher law. Although it is a heartbreak to watch a promising career self-destruct, the far greater danger would be that a person with skewed values would graduate and foist those values on the field.

3. Significance of admission. There is some concern that the case turned on the respondent's admission, and he was punished for being honest when asked about his transgression. While it may seem unfair that a person who will admit their error should be punished more than one who hides it, this case could have been made on the circumstantial evidence. More than three quarters of the paper were a verbatim lift, with no citation of any kind, while parts of the paper were properly cited. The respondent had a college degree and had nearly completed the Air War College. His prior work and the proper citation in the paper itself would show his ability to cite properly. The

board could have concluded based on the preponderance of the evidence<sup>166</sup> that the respondent intended to hold out the work of another as his own.

#### C. Intent Inferred: Major Franklin

In February 1987, Major Edward Franklin (hereafter called respondent) turned in a 29 page Junior ROTC handbook on U.S. strategic interests in 5 major regions of the world. The handbook had been compiled for use at 265 high school ROTC detachments.<sup>167</sup> It was a cut-and-paste piece, replete with citation errors. Major Franklin used direct quotes from seventeen sources but omitted quotation marks around any of the paragraphs.<sup>168</sup> Some references were placed at the end of paragraphs to indicate paraphrased passages, but the paragraphs were direct quotes and were neither enclosed in quotation marks, nor reworded as the citation would lead the reader to believe. Additionally, a series of rhetorical questions had no cite whatsoever and appeared to be a direct lift from a text.<sup>169</sup> The faculty evaluator found less than 10 words changed from the original source in 18 pages of text.<sup>170</sup>

On 10 March, the respondent was interviewed by an investigating officer and stated he had no intent to plagiarize another's work. He wanted to [cite without quotation marks] because he felt like that's what his sponsor wanted and he didn't want to put his personal opinion in the report.<sup>171</sup> Respondent repeated this denial at the faculty board on 15 April, basing his defense on ignorance of the proper formats and lack of correction by his faculty advisor prior to submission for evaluation.<sup>172</sup> The board concluded Major Franklin had in fact plagiarized, based on the extensive circumstantial evidence and the fact that he maintained under oath that he independently originated the six rhetorical questions posed in his paper, when they were worded precisely the same as the source. Based on this finding, the board recommended disenrollment from the school.

#### Analysis

1. Advisor's responsibility for citation errors. The initial grader noted many indicators of possible plagiarism including shallow research, abrupt style changes, stylistic inconsistencies, and use of long words.<sup>173</sup> However, the advisor had reviewed the product shortly before submission, and had not commented on the deficiencies.<sup>174</sup> He assumed the officer had written the paper in his own words.<sup>175</sup> Had he realized it consisted entirely of cut-and-paste quotes, he would have [ha]ld it rewritten in non-quoted form.<sup>176</sup>

This points up the need for clear guidance to faculty advisors as to their responsibility for reviewing citation as well as substance. Advisors should not be required to correct citations in a draft, but they should be alert to indicators of ignorance of citation formats and be able to communicate the correct methods. The faculty guidelines at appendix 4 address this issue.

2. Avoiding plagiarism in cut-and-paste projects. If the product is intended to be a cut-and-paste handbook, how does one avoid plagiarism? First off, at ACSC the writer clears such a project with the sponsor, the advisor, and the research department.<sup>177</sup> Next, mechanically speaking, he submits two copies of his paper: one annotated with proper citations to the sources used, and one clean copy for use by the requesting agency. Then at the beginning of each section that is entirely from another source, he places a one sentence "cleansing" citation to "explicitly state where the material came from."<sup>178</sup> For example, "this chapter is quoted from Mickey Dolenz' book, *Return of the Monkees*, pages 14-19." Finally, he "turn[s] in complete documents showing [the source of] the material."<sup>179</sup>

The device of using a one sentence covering citation could well be adopted in the field to give credit for handouts, fact sheets, and the like that are "borrowed" from another office. It is a simple way to give credit where credit is due.

3. Requirement of intent to plagiarize. The government counsel argued that the regulation does not require any intent to be proven other than "that intent which is taken when a person puts the pen to paper."<sup>180</sup> *Au contraire*, responded his learned opponent: "If you cannot prove that the person intended to pass off that person's work . . . then you cannot find plagiarism."<sup>181</sup> As noted above, the element of intent is needed in the academic setting to prevent punishment for inadvertent citation error. A legal ruling on the interpretation of AUR 53-6 has held that the element of intent *is* required to prove an allegation of plagiarism in a board proceeding, since the respondent must have *intended* to pass off the work of another as their own.<sup>182</sup>

However, if instead of responding to allegations of plagiarism in a faculty board pursuant to AUR 53-6, a person were charged under Article 92, UCMJ, for dereliction of the duty to properly cite, no element of intent would be required to prove the case. This alternative is amplified in the recommended changes to AUR 53-6, and the faculty and investigating officer's guidance at appendices 2, 4, and 5.

4. Illegal or "questionable" paraphrasing. During the course of the proceeding, a witness raised the question of when paraphrasing became plagiarizing.<sup>183</sup> Paraphrasing *per se* is not plagiarism. However, this area is an enigma because there is no clear guidance as to how many words must be rearranged, cut or



changed, to constitute permissible paraphrasing.<sup>184</sup> So long as the writer rewords the original text and cites the source of the paraphrased section, it is virtually impossible to prove he intended to pass off another's work as his own. Major Franklin transgressed in using cites as if he had paraphrased, when in fact he had taken direct quotes. In appendix 3 a 'rule of fives' is proposed as a guideline: if a paraphrased passage has five consecutive words verbatim from the original, quote them, and cite.

5. Faculty experts at the hearing. The Educational Advisor for ACSC and the Director of Evaluations, attended the entire proceeding to be available to advise the board on technical matters, pursuant to AU Reg 53-10, para 2b. Their input was not required.<sup>185</sup> Appendix 2 contains an amendment to the regulation excusing the non-voting experts except when needed as witnesses.

6. Conclusion. This case shows that in a faculty board hearing, intent can be inferred from strong circumstantial evidence. It also points up the urgent need for clarification of citation procedures for both students and faculty.

#### D. Intent Not Inferred: Major Hawthorne

The week after Major Franklin's board concluded at ACSC, a board was convened to consider another plagiarism case. Major Mary Hawthorne had compiled a cut-and-paste handbook for Junior ROTC in the leadership curriculum to cover such topics as personal affairs, military law, and human relations. The project had been turned in 13 Feb 1987, and when several inconsistencies were noted by the evaluator, was turned over to an investigating officer.

The investigating officer found several questionable aspects of the project. The majority of the paper, some 30 of 40 pages, was quoted or paraphrased from only 2 sources: a high school ROTC manual and a college ROTC text.<sup>186</sup> Citations were inconsistent as to use of quotation marks, with 5 pages composed entirely of quotes and several pages cited as if paraphrased, but actually taken verbatim from the source.<sup>187</sup> There were 9 instances of the wrong source being cited or no source being credited at all.<sup>188</sup> However, the sponsor was satisfied with the usefulness of the project and described it as 'an effort to pool referenced material, then follow the general outline provided and put it together in a logical sequence, i.e., 'cut and paste'.<sup>189</sup>

Based on the investigating officer's report, a faculty board was convened on 22 and 23 April 87 which elicited additional information concerning the preparation and documentation of the project. Guidance as to proper documentation had been given in her seminar at the beginning of the school year, along with

readings.<sup>190</sup> She felt she knew what plagiarism was and skipped the four page section on it.<sup>191</sup> By her reckoning, a direct quote was "a word for word quotation," and paraphrasing was "no longer word for word."<sup>192</sup> Some lengthy quotes were not set off by marks because "those [paragraphs] have minor word changes, and it was my interpretation . . . that it was paraphrasing, and I referenced that material . . . at the end of the citation."<sup>193</sup>

When her advisor reviewed the first draft, he cautioned her on proper citation forms and referred her to the research division (EDC) for specifics.<sup>194</sup> The EDC assistant properly advised her to use a blanket "cleansing" citation in the first paragraph of a section to avoid having to use numerous citations whenever an entire section or chapter was inserted verbatim.<sup>195</sup> He further specified that the project should be submitted in two versions, one annotated with references and marked showing quoted material, and one clean copy for use by the requestor.<sup>196</sup> The member later returned to the research division with a portion of her project which was reviewed and found acceptable. Unfortunately, she did not follow this guidance in the remainder of her paper.

After speaking with EDC, she met numerous times with her ROTC advisor to revise the project.<sup>197</sup> The advisor testified that the member had satisfied the ROTC requirements and had submitted "what had been asked for."<sup>198</sup> Finally, the member testified she had proofread or edited the final draft four times, but because some sources were later added to the bibliography, her numbering system had become disordered, which accounted for the miscitations.<sup>199</sup> In short, she had no intent to pass off another's work as her own.

In an apparent contradiction, the board found Major Hawthorne *did* "commit plagiarism as defined in AUR 53-6," but *did not* intentionally attempt to pass off the literary composition of another as her own.<sup>200</sup> Consequently, the board did not recommend disenrollment. Nonetheless, since she had "turned in an unsatisfactory, improperly documented research report," the board recommended she be required to submit a properly documented report and "be given a letter of reprimand for her unprofessional behavior."<sup>201</sup>

### Analysis

1. Responsibility of advisor. Here the advisor noted several problems in citation and confronted the member prior to the final submission of the paper.<sup>202</sup> He then referred her to the research department, where she was advised on proper forms of citation. The advisor and the research staff clearly fulfilled their functions. The responsibility to properly cite falls squarely on the member's shoulders.

2. Use of cleansing citations. The research division chief noted that when extracting an entire section from a document for use in a handbook, the "normal rules of citation . . . are a little bit cumbersome."<sup>203</sup> Cleansing citations, containing the words "edited by," or "quoted from," allow the writer to forego showing "direct quotes or paraphrased paragraphs because it is assumed it all came from [the indicated] sources."<sup>204</sup> This is reasonable and proper.

It also directly contradicts AUR 53-6 which states: "copying verbatim without quotations is plagiarism." This points up the need for clarifying language in the regulation as proposed in appendix 2, and could well explain the apparently contradictory finding of the board.

3. Defining paraphrasing. Vagueness enshrouds paraphrasing in the academic environment. How many words must be changed in a sentence or paragraph before it is properly paraphrased? Major Hawthorne felt minor word changes in a paragraph constituted paraphrasing such that direct quotation was improper and an ending citation should be used. For purposes of indicating the source of paraphrased material, the end cite is satisfactory. But evaluators object that for grading purposes this practice complicates the task of determining which words are the writer's and which are lifted. It leaves unanswered the question how far back does the citation ensnare? Appendix 3 contains a simple rule of thumb: no more than five paraphrased sentences are covered by an end cite. That will give students an idea of how often to cite and graders an idea of how much is original.

4. Conclusion. This case stands for the proposition that improper citation is not a disenrollment offense, but one that professional officers can be expected to avoid. It also points up the need for clarifying the definitions of plagiarism and paraphrasing as is suggested in appendix 2.

#### E. Circumstantial Evidence: Major Durning

A third hearing was convened at ACSC three weeks later involving Major John Durning. In this case, the investigating officer found that large portions of Major Durning's F-16 Instructor Handbook had been lifted directly from a similar handbook for F-15 instructor pilots. Over 90 percent of the 55 page booklet was a verbatim copy, with a single reference in the introduction to indicate the source.<sup>205</sup> No chapter or section cleansing disclaimers were included. In addition, a source entitled "Instructor Tips" was used for portions of the paper, but was not cited at all.<sup>206</sup>

Based on the investigating officer's report, the case was

heard by a faculty board on 14 May 87. In the board proceeding, several additional factors were adduced. Major Durning was working with his home unit to prepare a practical reference for F-16 instructors and indicated it would be based on the F-15 guide.<sup>207</sup> Although he had only skimmed the reading materials on plagiarism, he felt he knew what plagiarism was and maintained he had no intent to pass off another's work as his own.<sup>208</sup> He argued it was simply an oversight on his part that the paper was not properly cited.<sup>209</sup> When he had asked for advice on how to cite, he was advised to use a citation at the end of a paragraph if there was paraphrased material within the paragraph.<sup>210</sup>

Procedurally, the case was an anomaly. When the final draft was submitted, his advisor returned the original to him to correct several citation errors and advised him to simply resubmit the paper; rather than referring it to the research division for an investigation of plagiarism.<sup>211</sup> When this was done, confusion arose as to when his project had been "final" for purposes of considering plagiarism.

In addition, during the board hearing, an "instruction" or ruling was given by the legal advisor concerning "technical plagiarism," which was, unfortunately, inaccurate. The legal advisor indicated that there could exist a form of plagiarism without the element of intent, which would be considered plagiarism "technically" but would more closely resemble inadvertent citation error.<sup>212</sup>

The board consequently found the member had committed "technical plagiarism," but "did not intend to pass off the work of another as his own."<sup>213</sup> However, since the board members concluded Major Durning did violate academic integrity in a misleading written statement regarding an aspect of the project, they recommended disenrollment.<sup>214</sup> A subsequent rehearing overturned this latter conclusion based on the testimony of senior officers from Major Durning's prior base who corroborated his statement.<sup>215</sup>

### Analysis

1. Handling suspected plagiarism cases. When a faculty member suspects a student of plagiarism, the proper procedure is to notify the research department immediately and let them appoint an investigating officer. This rule would apply after the student had turned in the final draft for grading. Prior to that time, the faculty advisor should note any questionable practices and inform the student of proper methods. A faculty guideline addresses this problem in appendix 4.

2. Correcting misconception on "technical plagiarism." There is no such thing. The case was reviewed by higher

headquarters and returned for rehearing because of this unfortunate misinterpretation of the regulation. If an individual cannot be shown to have possessed the requisite intent, he cannot be found to have committed plagiarism. He may have cited incorrectly, and be derelict in the performance of his duty to properly follow regulations. But without intent, there is no plagiarism in academic settings.

This issue is the heart of the problem in plagiarism cases: differentiating intentional from inadvertent citation error. The appendices propose a "two track" approach, with one track using Article 92, UCMJ, to cover inadvertent miscitation as a dereliction of duty. These cases would generally result in an oral or written reprimand, or, in extreme cases, such as this one with 90 percent improperly cited, punishment in a nonjudicial forum. Cases where intent is shown by circumstantial evidence or by an admission of the respondent, would be on the second track, and would be referred to faculty boards for consideration of disenrollment.

3. Circumstantial evidence. This case illustrates the great confusion surrounding circumstantial evidence and its use in proving the element of intent. Simply put, circumstantial evidence means all the facts surrounding the incident. In this case, the board could have considered the great volume of uncited material, the officer's formal education, his education at ACSC as regards citation formats, his efforts to determine proper citation methods, his discussions with advisors, typists, and sponsors, his progress toward various interim deadlines, and his timeliness in submitting the project, as indications of his intent to pass off the works of another as his own. The standard of proof by which the board members would judge the facts is that of "the preponderance of the evidence," which requires only that the fact finder be persuaded that an event is more likely to have occurred than not. If one is persuaded by the circumstances that the officer intended to pass off the work as his own, that is enough.

4. Conclusion. This case points up the need for clear guidance to faculty and students alike on proper procedures in advising on plagiarism. It also points up the necessity for a better understanding of circumstantial evidence and a clear definition of plagiarism. These issues are addressed in appendices 2, 3, 4, and 5.

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## VII. Analysis of Plagiarism at Air University

### A. Overview

The four recent cases illustrate that Air University has a functional program to deal with plagiarism. There is an adequate definition of plagiarism in AUR 53-6, there are materials available for students to learn proper citation, and there are procedures in place to deal with suspected cases.

But the cases also highlight several issues. First, there is a conceptual problem with plagiarism that revolves around the inclusion of intent in the definition. Second, there is confusion about proving the element of intent in an administrative hearing using circumstantial evidence. Third, there are people who do indeed intend to pass off other's works as their own, but there are also highly educated people who do not understand proper citation methods. Finally, there is a need for training of both faculty and students on definitions, methods of citing, and procedures to handle plagiarism.

This chapter addresses these areas and recommends changing the regulations and student materials, and implementing guidelines for faculty and investigating officers. The means to carry out these recommendations are found in the appendices that follow.

### B. Defining the Offense

As a result of involvement with the four cases discussed above, the faculty at Air Command and Staff College gave a great deal of thought to the offense of plagiarism. Through a series of interviews with the principal decision makers,<sup>216</sup> a number of recommendations came forward as to approaches to the handling of plagiarism that warrant discussion.<sup>217</sup> The next section deals with the relative "wrongness" of the offense.

Conceptions about plagiarism range from "no big deal," reflecting the common practice in office work, to "the worst offense a student can commit," reflecting the concern for academic and professional integrity. The offense causes consternation among some people in the first group who have observed plagiarism routinely in staff work outside the academic environment. They note an irreversible leapfrogging effect from

the act of failing to put quotes around a paragraph, to lack of academic integrity, to lack of professional integrity, and finally to lack of fitness for service. They are concerned that the punishment for plagiarism does not fit the crime of inadvertent citation error, and since it is difficult to determine whether the respondent entertained the requisite intent, the cases are all lumped together.

There is also some reluctance among many people to single out this particular offense as the most egregious violation of academic integrity when various copyright violations occur daily without official censure. Unauthorized copies of video tapes, stereo cassette recordings, computer programs, magazine articles, and books are commonly made without any military sanctions being imposed. These copyright violations also involve lack of integrity, so what makes plagiarism any different?

The short answer is: these activities do fall below the standard of integrity expected of an officer, but problems of policing them preclude large scale prosecution. This is not meant to imply that authorities have relaxed prosecution of copyright infringement and piracy, or that if discovered, copyright violations cannot be pursued.<sup>218</sup> It is only to say that these routinely committed offenses which have much in common with plagiarism, are difficult to police. Plagiarism, on the other hand, is susceptible to discovery and more readily policed in an academic setting.

A more important consideration deals with the very nature of plagiarism, which is substantially different from the copyright violations indicated above. Plagiarism, that is, intentionally holding out the work of another as one's own, combines theft of an idea, with deceit in its use. It wrongs both the original author and the plagiarist's unsuspecting reader. The other offenses show misuse of the creator's product, but they lack the deception inherent in plagiarism. For these reasons plagiarism is treated differently than the various forms of copyright infringement.

A great deal of confusion surrounds the definition of plagiarism and whether it includes the element of intent. As noted earlier, in an academic setting the element is needed to serve the goals of training, evaluating, and certifying. At present, the element of intent must be inferred from the wording in AUR 53-6. To resolve this issue, a recommended definition is offered in Appendix 2, using words that explicitly define each element.

Few would disagree that a person who would intentionally pass off another's work as their own lacks the requisite moral character to be an officer or non-commissioned officer in the armed services; but what of the person who simply miscited. At first glance, the work appears to be plagiarized. But in his



heart of hearts, the writer had no interest in taking credit for someone else's effort. This is not plagiarism, because there is no wrongful intent, but how do we distinguish the two cases and avoid treating the jaywalker like an arsonist?

#### C. Procedures to Prosecute

Having concluded there is a distinction between miscitation and plagiarism so far as how they are defined, there should be an equally clear distinction as to how they are prosecuted. To help make this distinction, an informed, trained, objective person should be appointed as investigating officer in every suspected case. The investigator's principal focus should be on determining if the student intended to pass the work off as his own.

Where intent is indicated, the IO should recommend the commandant convene a faculty board hearing to consider disenrollment. Akin to the service academy honor boards, the faculty board would focus its inquiry on the issue of intent, and then make recommendations accordingly. Presently the boards are faced with a complicated task of determining what they are required to decide under the regulation.<sup>218</sup> The proposed plan would let them concentrate on the key issues.

When the IO (or the faculty board) finds substantial citation error but no wrongful intent, the case should be handled in a nonjudicial or administrative action such as Article 15, letter of reprimand, letter of counselling, or oral counselling, as a dereliction of the duty to properly cite. The level of the response should reflect the relative severity of the offense.

This 'two track' approach gives the commandant of the school sufficient information and latitude to exercise common sense and perspective and arrive at a well-tailored response. The proposed guidelines to effectuate this approach are contained in appendices 4 and 5.

#### D. Investigating Officer's Training

For all this to happen, the investigating officer needs to know how to tell the intent of the writer. To prepare for this task, the IO should be required to familiarize himself with the concept of plagiarism by reading various materials maintained by the research division, including the regulation, and the investigating officer's guideline. It would be wise to have a group of two or three officers prepared at any given time.

The investigation itself would be conducted much like an Article 32, UCMJ, preliminary hearing, with the alleged plagiarist under a rights advisement and represented by counsel, and witness statements summarized by the IO and sworn by the witness. If these basic steps are followed, the evidence obtained will be admissible in any and all of the forums to which the case might be referred, and the case will not be needlessly delayed.

#### E. Faculty training

Two items in particular require attention in this area: advising students on proper citation methods prior to submission of the paper, and proper steps to follow after a student turns in a suspected plagiarism. Up until the point of submission, the faculty advisor should consult with the student and point out any passages that do not appear to be properly cited. He should be alert to changes in style, phrasing, and treatment and should advise the student when irregularities are discovered. Advising students would be greatly simplified by adoption of a simple rule of thumb that would be easy to remember, easy to grade, easy to follow, and easy to infer intent from if it were not followed. The "rule of fives" listed in appendix 3 should suffice. It gives the faculty instructor and the student a workable touchstone.

If the student's submission fails the touchstone test, the faculty needs specific procedures for handling the case. These are contained in appendix 4 and can be summarized as follows. Once a paper has been turned in as a final product, it must be properly cited. If the faculty member notes any irregularity, they should first cross check the sources and confirm their information. Then, if there are improperly cited passages, other than obvious typographical errors, the case should be turned over to the research division (EDC).

The research division will handle the case administratively including having an investigating officer appointed, contacting the base legal office, and arranging typing support for the IO. The faculty member would then serve as a witness for the IO, and, if needed, for the faculty board.

#### F. Student training

In three of the four cases discussed, the students indicated they did not understand the rules for citation. This issue can be addressed by clarifying the student guidance and enhancing the instructional program.

The recommended instructional method is to brief students

shortly after the beginning of the year using an informal video tape and reviewing the proper ways to cite. This puts people on notice of the importance of crediting sources, and shows them where to get more information if they have questions. Having them sign a statement of understanding on plagiarism at the time they submit their projects is recommended because it is a last reminder to double-check their citations, and serves to prove they were aware of the consequences of plagiarism when they acted.

The student guidance should concisely inform them how to properly credit sources. It should indicate the school's definition of plagiarism and establish basic rules of citation. And it should do so in unambiguous terms. To this end, the author proposes a "rule of fives" that summarizes James D. Lester's guidance in *Writing Research Papers*:<sup>220</sup>

1. If its verbatim, quote it.
2. If the quote exceeds five lines, indent it.
3. If its a paraphrase, reword it.
4. If the reword includes five consecutive words verbatim, quote them.
5. If the paraphrase exceeds five lines, cite it every five.

Students should have no trouble learning this "rule of fives" and the various rules for proper citation listed in their writing materials. Its use should alleviate much of the confusion surrounding plagiarism. This information is addressed more fully in appendix 3 in the form of an update of the *ACSC Research Handbook*.

This section has analyzed the program at Air University and recommended changing AUR 53-6 to clarify the fact that intent is an element of plagiarism, changing the student guidance to add a "rule of fives," and implementing faculty and investigating officer guidelines. The net result of this coordinated approach to plagiarism should be a significant decrease in the number of cases to be handled and a significant improvement in the handling of cases.

## VIII. Conclusion

Civilian and military schools have a problem defining, deterring, and dealing with plagiarism.

Historically, the offense has been a source of controversy as writers borrowed from their predecessors in ancient Greece, in Ceasar's Rome, Elizabethan England and modern America. The ethical objection to these "borrowings" gave rise to legal protections in the courtroom for common law plagiarism or copyright infringement, and ultimately to the comprehensive federal Copyright Act of 1976. A plagiarized author can now bring suit in federal court if he can show his work was "copyrighted or copyrightable" and "copied." He need not prove intent on the plagiarist's part.<sup>221</sup>

The pressures that gave rise to this civil law sanction differ from those that obtain in an academic setting. The scholastic obligations to train students in the mechanics and ethics of proper citation, and to certify a student's fitness for future employment, necessitate a different concept of plagiarism. The academic concept must include the element of intent in addition to the element of appropriating the works of another.<sup>222</sup> More specifically, the writer must have intended to pass off the work of another as his own. The presence or absence of this element of intent is the great dividing line for cases of plagiarism.

Cases that have no element of wrongful intent are simply inadvertent citation error, or dereliction, and should be dealt with in a less punitive manner than those in which the writer can be shown to have intended to deceive the reader. Otherwise, a student who is momentarily forgetful or ignorant will be treated as if he were malevolent.

On the other hand, intentional holding out of another's work as one's own is the lowest form of theft, combining self-aggrandizement and wrongful taking. This offense should be met with firm administrative sanctions including disenrollment.

A "two track" approach to the problem is needed to fairly determine which cases fall into each category.<sup>223</sup> For this task, the author recommends an investigator be trained in the concepts of plagiarism, the methods of determining intent through circumstantial evidence, and sound interviewing techniques. The investigator would assemble the available evidence to make a preliminary recommendation to the commandant of a military school or the dean of a civilian university, as to

whether the student's act was intentional or inadvertent, and what sanctions to pursue.<sup>224</sup> The investigator would rely on the legal office for assistance in this determination.

But more important than having a trained investigator to ferret out intent, is having an informed student body to prevent plagiarism in the first instance. This requires the faculty to first adopt a clear definition of plagiarism, and then give instruction in it. To this end, the author recommends a "rule of fives" in appendix 3, based on James Lester's *Writing Research Papers*,<sup>225</sup> but delineating simple rules for citing quotations and paraphrases. The "rule of fives" will be easily taught by faculty and easily followed by students. Moreover, if a student fails to adhere when the rule is so simple, the circumstantial evidence is strengthened.

The result of clearly defining plagiarism, informing the student body, and adopting a two track approach to distinguish well-meant shortcoming from intentional deceit, should result in fewer cases of plagiarism, and prompt, fair determinations of cases that may arise. While no system can guarantee 100 percent accuracy, this proposal should assist school administrators in bringing an end to plagiarism.

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## FOOTNOTES

1. *Montgomery Advertiser*, Aug. 27, 1987, section D, at 1, col. 1. Auburn University quarterback Jeff Burger went before an Academic Honesty Committee on August 6, 1987 to face charges of "plagiarizing by not properly documenting direct quotations in four segments of a [psychology] term paper intitled 'Executive Stress.' Burger footnoted all four segments but used no quotation marks." *Id.* at col. 2. Burger defended by claiming he had not referred to the syllabus that contained the proper citation methods, while "hurriedly" writing the project the weekend before it was due. "I thought that the footnotes I had in my paper were sufficient and that was giving credit to somebody else's work." *Id.* at D2, col. 5.

A controversy arose at the hearing as to the nature of the offense. One side viewed the case as "inadvertent plagiarism" which they considered a "lesser form" of the offense that arises when a student cites a source, but improperly annotates the passage. According to this view, inadvertent plagiarism is not as bad as giving an incorrect cite or no cite at all. *Id.* at col. 4.

The opposing view on the faculty was that there is no distinction between "errors from ignorance and errors of dishonesty," because whether "committed out of ignorance, laziness, [or] inattention" it is still work that is dishonestly presented." *Id.*

Burger maintained he had no intent to be dishonest, and apologized for his mistake. *Id.* at col. 5. The committee recommended expulsion, but Warren Brandt, the Vice President of Academic Affairs, overrode the recommendation and permitted Burger to remain in school. The case sparked an inquiry into the handling of plagiarism at Auburn. *Montgomery Advertiser*, Jan. 27, 1988, section B, at 1, col. 2.

2. Senator Joseph R. Biden, Jr. (D-Del) an announced candidate for President, admitted on September 18, 1987, to plagiarizing "a law review article for a paper he wrote in his first year of law school." *N.Y. Times*, Sept. 18, 1987, at 1, col. 1. The incident occurred in 1965 while Biden was a student at Syracuse University Law School. In a fifteen page legal research paper he "lifted without citation five pages from a published law review." *Washington Post*, Sept. 18, 1987, at 1, col. 1.

For this the school initially failed him in the course, and then permitted him to retake it, after Biden defended his action on grounds of ignorance. "In a letter to the dean and faculty, he explained he did not think it was 'possible to plagiarize'."

the legal memorandum because he was 'under the misguided understanding' that the sole purpose of the assignment was to demonstrate an understanding of the form of legal writing and provide a critic with source materials to consider." *Id.* at All, col. 1.

Sen. Biden subsequently acknowledged borrowing without attribution portions of various speeches by British Labour Party Leader Neil Kinnock, Senator Robert Kennedy, and Vice President Hubert Humphrey. *N.Y. Times*, Sept. 18, 1987, at 15, col. 5.

3. Ms. Glenna Cilento of Urbana, Illinois, a former university secretary at the University of Illinois claimed to have 'retyped a lightly doctored magazine article for [Rev. Jesse Jackson] to hand in as a paper when he was a freshman' in 1960. *Montgomery Advertiser*, Jan. 11, 1988, section A, at 4, col. 2. She said Rev. Jackson 'gave her a Time magazine article with only minor word changes to be submitted as his own work.' *Id.* at col. 3.

Jackson had no recollection of the incident, but noted 'there was no record of any disciplinary action' against him at the school. *Id.* at col. 4.

4. As noted above, Senator Biden's and Jeff Burger's cases were heard before faculty committees and both individuals were found guilty. Allegations against Rev. Jackson have not been heard by a faculty committee and must be treated as unsubstantiated.

5. Senator Biden withdrew from the Presidential race within a week of disclosure of the law school incident, saying 'the shadow [of my] mistakes has begun to obscure the essence of my candidacy.' *Christian Science Monitor*, Sept. 24, 1987, at 1, col. 4; cont'd at 32, col. 1.

The Auburn University incident created a 'six-month-long controversy' over the handling of plagiarism cases and the allegedly favorable treatment accorded Jeff Burger because he was an athlete. *Montgomery Advertiser*, Jan. 27, 1988, section B, at 1, col. 1.

6. Dr. Gary Swanson, Chairman of the Auburn University Ad Hoc Committee on Academic Honesty 'urged a discussion of the definition of plagiarism because the committee found a broad spectrum of opinions exists on campus regarding plagiarism.' *Id.* at col. 3. In particular, 'the difference between negligent and intentional plagiarism needs to be addressed.' *Id.*

7. While there are numerous style manuals and citation guides, there is very little to be found on the mechanics of establishing a program of academic honesty at a university. More specifically, there is a dearth of information on the issue of intentional versus inadvertent plagiarism. This article seeks to remedy that situation.



8. As Senator Biden's case illustrates, a person's career prospects may be severely limited by a charge of plagiarism.

9. To protect the privacy of the individual, he will be referred to as Major Edward Franklin. The case was heard on Apr. 15 and 16, 1987, at Maxwell AFB, Alabama, and is analyzed in section VI.

10. This individual will be referred to as Lt Col Marc Byron; the hearing occurred on Apr. 17 and 18, 1986, at Maxwell AFB, Alabama, and is analyzed in section VI.

11. Telephone interview with Darnell, Ronald H., Lt Col, USA, Registrar, Army Command and General Staff College, Fort Leavenworth, Kansas, Nov. 10, 1987. This school is designed for Majors in the Army and handles three to four plagiarism cases each year on average, with miscitation constituting about half. *Id.* The school is addressed in more detail in section IV.

12. Telephone interview with Hodgkins, William S., Capt, USN, Dean of Academics, Naval Command and General Staff College, Newport, Rhode Island, Nov. 23, 1987.

13. Memorandum for United States Corps of Cadets, West Point, New York, Subject: Honor Violation #3, Sep. 25, 1987. This cadet copied *Cliff's Notes* for an English term paper without citing it. *Id.* West Point's plagiarism program is discussed in section IV.

14. Plagiarism Talking Paper by Ingvoldstad, Jacqueline, Cadet Honor Wing Secretary, United States Air Force Academy, Colorado Springs, Colorado, Jan. 4, 1988. The Air Force Academy's plagiarism program is addressed in section IV.

15. Letter from Rawhouser, M. A., Lt, USN, Honor Officer, U. S. Naval Academy, Annapolis, Maryland, to the author, Dec. 15, 1987. The Naval Academy's approach to plagiarism is addressed in section IV.

16. Telephone interview with Channave, Frank, Major, USAF, Chief of Evaluation, ACSC Associate Program, Maxwell AFB, Alabama, Jan. 21, 1988.

17. US Department of the Air Force: *Academic Integrity*, Air University Regulation 53-6, Headquarters Air University, Maxwell AFB, Alabama, Nov. 19, 1984.

18. *Air University Education Digest*, published quarterly by AU/ACC, Maxwell AFB, Alabama, Sep. 30, 1987, at 1. Air War College enrolls over 500 senior officers from the Air Force and other services in resident and associate programs and has 'more than 8,400 total seminar and correspondence students enrolled' in 127 seminar groups world-wide. *Id.*

19. Air Command and Staff College "enrolls approximately [550] officers from [the Air Force and] other services and countries" in residence and "conducts a 40-week associate program involving nearly 850 students in 81 seminars at 65 locations throught the world." *Id.*

20. Squadron officer school enrolls approximately 4,000 company grade officers annually in five distinct 8-1/2 week courses and "provides correspondence courses for over 23,000 students annually." *Id.* at 3.

21. The "SAF Senior Noncommissioned Officer Academy "enrolls 250 top NCOs in each of five classes annually in resi- dence [and] provides associate correspondence programs which annually serve over 50,000 NCOs in grades SSgt through CMSgt." *Id.*

22. The Air Force Institute of Technology "conducts Profes- sional Continuing Education courses for over 20,000 DoD person- nel annually in three resident shhools: Engineering, Systems and Logistics, and Civil Engineering, and through Civilian Institution Programs." *Id.* at 2. Additionally, "over 5,000 students [are] engaged in long-term degree and nondegree pro- grams at some 350 colleges, industrial firms, and medical facil- ities throughout the United States and abroad. *Id.*

23. The Extension Course Institute under Air University "is one of the world's largest schools [with] an enrollment of 375,511 during FY 87." *Id.* at 4.

24. A conservative estimate would be \$10,000, including approximately \$500 for transcription and reproduction of a 300 page verbatim record. Interview with Nolen, Charles M., Court Reporter, 3800 ABW/JA, Maxwell AFB, Alabama, Sep. 4, 1987.

25. The figure is reached by adding the salary of a lieute- nant colonel with over 20 years service on flight pay (\$55,740); to the per student cost of instruction at the War College (\$117,204 from Air University Education Digest, *supra*, note 18, at 38); to the same opportunity cost (\$117,204); to the under- utilized flight training (7/24ths of an estimated \$1,000,000 = \$291,000) for a total of \$581,148.

26. AFIT's School of Engineering Graduate Program costs \$132,936 per master's degree student and the doctoral program runs \$266,944. *Id.* at 41.

27. Interview with Collette, Randolph, Maj, USAF, Chief of Military Justice, AU/JA, at Maxwell AFB, Alabama, Nov. 9, 1987. See also, *The Inspector General (TIG) Brief*, "Cheating in Nonresident PME," Issue No. 7, AU/XPOS, July-August 1986. For plagiarism in the Extension Course Program, another "member received Article 15, \$2,000 fine, and retired in lieu of court- martial." *Id.*

28. A. Lindey, *Plagiarism and Originality* (1952) at 63, quoting Lord Byron.

29. *Id.*

30. *Id.* at 64.

31. *Id.*

32. *Id.* at 65.

33. *Id.*

34. *Id.*

35. *Id.* at 66, quoting W. H. Auden.

36. *Id.* at 67, quoting Pliny the Elder.

37. *Id.* at 72.

38. *Id.* at 73.

39. *Id.* at 76, quoting Robert Stephen Hawker. "So great was [Milton's] indebtedness to the classics that it was said that if he soared, it was because he plucked feathers from the wings of Homer and Virgil." *Id.*

40. *Id.* at 73.

41. *Id.* at 75, citing Malone.

42. *Id.* at 93, quoting Edgar Allen Poe.

43. *Id.* at 231-32, quoting Edgar Allen Poe.

44. *Id.* at 232.

45. *Id.*

46. *Id.*

47. The topic sentences of the first three observations are paraphrased from Lindey, *supra*, note 28, at 94.

48. *Id.* at 95.

49. *West's Law Dictionary* (5th ed., 1979) at 1035. The definition continues:

To be liable for plagiarism it is not necessary to exactly duplicate another's literary work, it being sufficient if unfair use of such work is made by lifting of substantial portion thereof, but even an exact counterpart of another's work does not constitute pla-

gism if such counterpart was arrived at independently. *Id.*

50. Lindey, *supra*, note 28, at 2.

51. 20 Am. Jur. *Proof of Facts* (1st ed., 1968) at 730.

52. *Id.*

53. E. Kintner & J. Lahr, *An Intellectual Property Law Primer* (2nd ed., 1982) at 415, [hereinafter cited as Kintner & Lahr].

54. Lindey, *supra*, note 28, at 2.

55. Copyright Act of 1976, 90 Stat. 2541-2602, 17 U.S.C. section 101, et seq., which went into effect on Jan. 1, 1978 [hereinafter cited as the Act].

56. Kintner & Lahr, *supra*, note 53, at 339.

57. "In common with the U.S. patent system, federal copyright law owes its existence to Article I, Section 8, Clause 8 of the Constitution. This clause permits congress to secure to inventors for limited times the exclusive right to their discoveries, and to 'authors' the exclusive right to their 'writings' " *Id.*

58. 17 U.S.C.A. sections 13, 26 (since revised by Pub.L. 94-553, Title I, section 101, Oct. 19, 1976, 90 Stat. 2541). See also, Kintner & Lahr, *supra*, note 53, at 340-42.

59. The Act, *supra*, note 55, at sections 506, 501-504. Criminal offenses are treated in section 506 of the Act.

Any person who infringes wilfully [sic] and for purposes of commercial advantage a copyright in a sound recording or a motion picture, for the first offense is liable to be fined not more than \$25,000 or to be imprisoned for not more than one year or both. For each subsequent offense, he is liable to a fine of not more than \$50,000 or imprisonment of not more than two years or both. Cited in *Intellectual Property Law* (Ill. Inst. for CLE, 1978), section 10.36.

Civil remedies are covered in sections 501 through 504.

A court may grant temporary and final injunctions to restrain infringement of a copyright (section 502). At any time while an action is pending, the court may order the impounding of all copies or phonorecords allegedly infringing the copyright owner's exclusive rights. As part of its final judgment, the court may order the destruction or other disposition of all infringing copies or phonorecords (section 503).

A copyright owner shall also be entitled to actual damage and any additional profits of the infringer, or the copyright owner may obtain statutory damages, which will be no less than \$250 and no more than \$10,000 for each infringement. A single infringer of a single work is liable for a single amount, no matter how many acts of infringement are involved and regardless of whether the act were separate, isolated or occurred in a related series (section 504). *Id.*, at section 10.37.

60. Kintner & Lahr, *supra*, note 53, at 415.

61. The Act, *supra*, note 55, at section 101.

62. Kintner & Lahr, *supra*, note 53, at 415. "[T]he only requirement for copyrighting a literary work is that the means of expressing the ideas contained therein be a product of independent, original, and intellectual labor." 20 Am. Jur. Proof of Facts, at 731, citing *Loomskill, Inc. v. Slifka*, 233 F. Supp. 845 (D.C.N.Y. 1963), *aff'd* 33 F.2d 952 (2nd Cir. 1964); *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 23 S.Ct 298 (1903).

63. Section 102 of the Copyright Act delineates other types of works that are "copyrightable" and includes "literary works," "musical works," "dramatic works," "pictorial graphic and sculptural works." If a creative piece falls within any of the listed categories, it is copyrightable. This is significant in that it eases the plaintiff's burden of showing that his work was either copyrighted or copyrightable.

64. 20 Am. Jur. Proof of Facts, *supra*, note 51, at 751-52, citing *Greene v. Bishop*, 1 Cliff 186, (CA Mass. 1858) (F. Cas. No. 5763).

65. 20 Am. Jur. Proof of Facts, *supra*, note 51, at 752.

66. Kintner & Lahr, *supra*, note 53, at 415.

67. *Id.* at 416.

68. *Id.*

69. 20 Am. Jur. Proof of Facts, *supra*, note 51, at 760, citing *Toksvig v. Bruce Pub. Co.*, 181 F.2d 664 (7th Cir. 1950).

70. *O'Neill v. Dell Publishing Co.*, 630 F.2d 685, 686 (1st Cir. 1980). The opinion quotes *Scott v. WKJG, Inc.*, 376 F.2d 467, 469 (7th Cir. 1967), *cert. denied*, 389 U.S. 832, 88 S.Ct. 101, 19 L.Ed.2d 91 (1967): "It must be remembered that copyright protection does not extend to ideas, plots, dramatic situations, and events. Rather it is limited to the arrangement of words that author uses to express his ideas."

71. Kintner & Lahr, *supra*, note 53, at 417.

72. *Id.*

73. *Cartin v. Boles*, 155 Ga. App. 248, 270 S.E.2d 799 (Ga. App. 1980), citing 17 U.S.C.A. section 2. In *Cartin v. Boles*, a novice writer sued a professional author with whom she had contracted to revise her unpublished manuscript. She alleged the author had used material from her work in his book *The Limner*. The court held against her, overruling her contention that the lower court had failed to establish a legal standard for plagiarism. *Id.*

74. 20 Am. Jur. Proof of Facts, *supra*, note 51, sections 3-32.

75. *Id.* at section 24. "The intention to plagiarize is not essential to liability for infringement of a work of narrative fiction protected by either statutory or common-law copyright. It follows that unconscious plagiarism is actionable . . . ." *Id.* at p. 752. Although unconscious plagiarism may be the basis for a lawsuit, "courts usually . . . will take lack of intention into consideration in [their] determination of the extent of liability or the nature thereof." *Id.*

76. The Act, *supra*, note 55, section 506.

77. Cadets and midshipmen attend a four year undergraduate course of instruction at the service academies, while officers with eleven to fifteen years of commissioned service attend the Intermediate Service Schools for ten month terms (five months at AFSC).

78. US Department of the Army. *The Honor Code and Honor System*, US Military Academy. USCC Pamphlet No. 632-1, West Point, New York, June 1, 1987, at 1.

79. *Id.* at 10.

80. *Id.* at 10-11 (emphasis in original.)

81. *Id.* at 11.

82. US Department of the Army. *Honor Committee Procedures*, US Military Academy. USCC Pamphlet 15-1, West Point, New York, June 1, 1984, at 2-2 - 2-4.

83. *Id.* at 2-7.

84. *Id.* at 2-16.

85. Letter to the author from Sergeant First Class Rollins, US Military Academy, Honor Committee Administrator, West Point, New York, Dec. 14, 1987.

86. US Department of the Army: US Military Academy, Honor Committee, Memorandum for the Corps of Cadets, West Point, New

York, Sep. 25, 1987.

87. US Department of the Air Force: *Honor Code Reference Handbook of the Air Force Cadet Wing*, Volume I, US Air Force Academy, Colorado Springs, Colorado, July 17, 1987, at 1, [hereinafter cited as *USAFA Honor Code Handbook*].

88. *Id.* at 8.

89. *Id.* at 9.

90. US Department of the Air Force: English III Plagiarism Briefing, US Air Force Academy, Colorado Springs, Colorado, undated, at attachment 2, p. 1.

91. *Id.* at p. 2.

92. *Id.*

93. *Id.*

94. *Id.* at 3-4.

95. *USAFA Honor Code Handbook*, supra, note 87, at 21.

96. *Id.* at 22.

97. *Id.* at 24.

98. *Id.* at 25.

99. *Id.* at 25-26.

100. *Id.* at 28.

101. *Id.*

102. *Id.*

103. Letter to the author from Ingvoidstad, Jacqueline, US Air Force Academy, Cadet Honor Wing Secretary, Colorado Springs, Colorado, Jan. 6, 1988, with attachment dated Jan. 4, 1988.

104. US Department of the Navy. *Honor Concept of the Brigade of Midshipmen*, USNAINST 1610.3C. Annapolis, Maryland, Aug. 21, 1982, at 1-1.

105. *Id.* at 1-2.

106. *Id.* at 1-2 - 1-3.

107. *Id.* at 1-3 - 1-4.

108. *Id.* at 4-1 - 4-2.

109. *Id.* at 4-3 - 4-6.
110. *Id.* at 4-7.
111. *Id.* at 4-13 - 4-16.
112. *Id.* at 4-13 - 4-15.
113. *Id.* at 4-16.
114. Letter to the author from Rawhauser, M. A., LT, USN, US Naval Academy Honor Officer, Annapolis, Maryland, (on the USNA Honor Concept) Dec. 15, 1987.
115. US Department of the Army. *Army Command and General Staff Officer Course, College Catalogue*, CGSC Cir. 351-1, Ft. Leavenworth, Kansas, May 1987, at 18.
116. *Id.*
117. *Id.*
118. Telephone interview with Darnell, Ronald H., Lt Col, USA, Registrar, Department of Academic Operations, Army Command and General Staff Officer Course, Ft. Leavenworth, Kansas, Nov. 10, 1987 [hereinafter cited as Darnell interview].
119. Talking Paper by Air Command and Staff College (EDC), "ISS and SSS Comparative Programs That Require Students to Write Paper(s) Based on Analysis and Logical Support (Research)," Dec. 10, 1987, [hereinafter cited as Research Talking Paper].
120. Darnell interview, *supra*, note 118.
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. Telephone interview with Hawkins, William, Capt, USN, Dean of Academics, Naval Command and General Staff College, Newport, Rhode Island, Nov. 30, 1987 [hereinafter cited as Hawkins interview].
126. Research Talking Paper, *supra*, note 119.
127. Hawkins interview, *supra*, note 125.
128. *Id.*
129. Letter to the author from Weittenhiller, Larry, J., CDR, USN, Director of Communicative Arts, National Defense Uni-



versity, Armed Forces Staff College, Norfolk, Virginia, Nov. 30, 1987.

130. US Department of Defense. National Defense University. *Operations Manual*. Armed Forces Staff College Regulation 100.1, Norfolk, Virginia, undated, at p. 3-8-9.

131. Research Talking Paper, *supra*, note 119.

132. US Department of Defense. National Defense University. *AFSC Term Paper, Volume 1, Student Guidance*, Number 6S40, Norfolk, Virginia, August 1987, at 18.

133. *Id.*

134. *Id.*

135. *Id.* at 19.

136. *Id.*

137. Telephone interview with Weittenhiller, Larry J., CDR, USN, Director of Communicative Arts, Armed Forces Staff College, Norfolk, Virginia, Nov. 30, 1987.

138. *Id.*

139. US Department of the Air Force. *Academic Integrity*, Air University Regulation 53-6, Nov. 19, 1984, at paragraph 1 d (1), [hereinafter cited as AUR 53-6].

140. *Id.*

141. W. Ebbitt & D. Ebbitt, *The Writer's Guide and Index to English* (6th ed. 1978). "A quoted passage that's more than four lines long when you type it out should be set off from the rest of the manuscript. Unless your instructor wants you to double-space, type it single-spaced." *Id.* at 350. See also, *The Dickinson School of Law Brief Guide to Citation Forms*, Dickinson School of Law, Carlisle, Pennsylvania, 1980. "Quotations of 50 words (generally 5 typed lines) or more are single spaced and indented evenly with the paragraph indentation. Quotation marks are not used." *Id.* at 5, citing the *Texas Law Review Manual on Style* (3rd ed. undated) at 41.

142. AUR 53-6, *supra*, note 139, para 1 d (1).

143. US Department of the Air Force. *USAF Formal Schools*. Air Force Regulation 50-5. Washington, DC: Government Printing Office, Dec. 1, 1986, para 1-44 b (2) [hereinafter cited as AFR 50-5].

144. *Id.* at para 1-44 b (3).

145. *Id.* at para 1-44 b (4).

146. *Id.* at para 1-44 c (2).
147. *Id.* at para 1-45 c.
148. *Id.* at para 1-45 d (2) (b).
149. US Department of the Air Force. *Air Command and Staff College Review Boards*. ACSC Regulation 53-10. Maxwell Air Force Base, Alabama, Oct. 28, 1986, para 4 a (3) [hereinafter cited as ACSCR 53-10].
150. AFR 50-5, *supra*, note 143, para 1-45 d (3).
151. US Department of the Air Force. *Headquarters Air University Supplement 1 to AFR 50-5, USAF Formal Schools*. Maxwell Air Force Base, Alabama, Feb. 22, 1985, para 1-43 a (3) (a) [hereinafter cited as AU Sup 1].
152. *Id.* at para 1-43 a (3) (b) 8.
153. ACSCR 53-10, *supra*, note 149, para 4.
154. AUR 53-6, *supra*, note 139, para 2 a.
155. Transcript of Faculty Board Hearing conducted pursuant to AFR 50-5, Maxwell Air Force Base, Alabama, Apr. 17 and 18, 1986, at 21 [hereinafter cited as Byron].
156. *Id.* at 21-22.
157. *Id.* at 24, 95.
158. *Id.* at 98.
159. *Id.*
160. *Id.* at 99.
161. *Id.*
162. *Id.* at 111-114.
163. *Id.* at 114-116.
164. *Id.* at 124.
165. Interview with Collette, Randolph, Maj, USAF, Chief of Military Justice, HQ AU/JA, at Maxwell Air Force Base, Alabama, Nov. 9, 1987.
166. In administrative hearings conducted under Air Force Regulation 111-9, *Boards of Officers*, dated 19 July 1985, "the standard of proof . . . must be by a preponderance of the evidence" (para 3 b). This standard compares to the "beyond a

reasonable doubt" standard in criminal trials, but it is less rigorous. It can be understood as requiring the decision maker to believe a fact is more likely so than not so; to feel the scales tilt towards the fact; or to have a 51 percent certainty about the fact.

167. Transcript of Faculty Board Hearing conducted pursuant to AFR 50-5, at Maxwell Air Force Base, Alabama, on Apr. 15 and 16, 1987, at Government Exhibit 15 [hereinafter cited as Franklin].

168. *Id.* at 26.

169. *Id.* at Government Exhibit 16, Faculty Evaluation Form, AU Form 613, Mar. 4, 1987.

170. *Id.*

171. *Id.* at 63.

172. *Id.* at 100.

173. *Id.* at 25, 44-46.

174. *Id.* at 75.

175. *Id.* at 76.

176. *Id.* at 73.

177. *Id.* at 51-52.

178. *Id.* at 116. Testimony of Director of Research referring to the Research Handbook, ACSC/EDCC, Maxwell Air Force Base, Alabama, 1987, at 68.

179. *Id.* at 116.

180. *Id.* at 120.

181. *Id.* at 126.

182. Letter from Thomas Springob, Col, USAF, HQ Air University Staff Judge Advocate to Frank Willis, Brig Gen, USAF, Commandant of ACSC, Aug. 12, 1986 (discussing elements of plagiarism).

... Proving the second element of the offense, which includes 'intent,' is more difficult. Intent, being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. It presupposes knowledge. Since it is the state of mind existing at the time a person commits an offense, intent may generally be evidenced by an act, circumstances and inferences deducible therefrom. Factors

such as length of quote, absence of footnotes, absence of quotation marks, sophistication of the quote, uniqueness of an idea among others, can be considered. *Id.*

183. Franklin, *supra*, note 167, at 115.

184. E.g., the *Writer's Guide and Index to English*, *supra*, note 141, defines a paraphrase as "restating an idea in your own words." *Id.* at 350. *The Chicago Manual of Style* (13th ed., 1982) does not even bother to define paraphrasing in its treatment of permissible quotation methods. It simply states: "Whether authors paraphrase or quote from sources directly, they should give credit to words and ideas taken from others." *Id.* at 282.

185. Franklin, *supra*, note 167, at 112.

186. Transcript of Faculty Board Hearing conducted pursuant to AFR 50-5, at Maxwell Air Force Base, Alabama, Apr. 22 and 23, 1987, at Government Exhibit 15, Project Evaluation, AU Form 613, p. 2 [hereinafter cited as Hawthorne].

187. *Id.* at Government Exhibit 17, Investigating Officer's Report, p. 2.

188. *Id.* at Government Exhibit 15, Project Evaluation, AU Form 613, p. 4.

189. *Id.* at Government Exhibit 17, Investigating Officer's Report, p. 4.

190. Hawthorne, *supra*, note 186, at 25-26.

191. *Id.* at 109.

192. *Id.* at 67.

193. *Id.* at 98.

194. *Id.* at 38.

195. *Id.* at 72-73.

196. *Id.* at 75.

197. *Id.* at 94.

198. *Id.* at 83.

199. *Id.* at 95.

200. *Id.* at 120 (emphasis added.)

201. *Id.*

202. *Id.* at 38.

203. *Id.* at 72.

204. *Id.* at 76.

205. Transcript of Faculty Board Hearing conducted pursuant to AFR 50-5, at Maxwell Air Force Base, Alabama, May 14, 1987, at 92 [hereinafter cited as Durning].

206. *Id.*

207. *Id.* at 79-80.

208. *Id.* at 84.

209. *Id.* at 97.

210. *Id.* at 81.

211. *Id.* at 82-83.

212. *Id.* at 60-61.

213. *Id.* at 102.

214. *Id.*

215. Transcript of Faculty Board Hearing conducted pursuant to AFR 50-5, at Maxwell Air Force Base, Alabama, July 2, 1987, at 51.

216. Faculty members were interviewed at Air Command and Staff College, Maxwell Air Force Base, Alabama on the dates indicated: Colonel Robert G. Bradshaw, Vice Commandant (Nov. 2, 1987); Colonel Albert L. Abernathy, Director of Operations (Oct. 19, 1987); Colonel Cecil C. Robins, Dean of Curriculum (Oct. 29, 1987); Lt Colonel H. A. Staley, Chief, Staff Communication and Research Division (numerous interviews between Sep. 30, 1987 and Feb. 8, 1988); Major Thomas D. Miller, Senior Faculty Instructor (and Investigating Officer) (Nov. 3, 1987); and Major William E. Sheppard, Chief, Resident Program Evaluation (Nov. 3, 1987).

217. The ideas that follow in the text grew out of the many interviews and discussions listed in note 216, but are not attributed to particular faculty or staff members. Some indicated a preference not to be quoted, others simply wanted the analysis of the cases to remain free of "external influence," and wanted to let the chips fall where they would. In every instance the "interviewees" were forthright and helpful. The author desires to clearly state he has no intent to take credit for ideas not his own.

218. See e.g., *Asia Bows to US Pressure for Crackdown on Copyright Pirates*, *Christian Science Monitor*, Dec. 17, 1987, at 1, col. 1 and at 5, col. 1, indicating prosecutions are on the rise in foreign nations as a result of "pressure from the United States to honor and enforce American copyrights." *Id.*

219. AUR 53-6, *supra*, note 139, para 1 d (1).

220. J. Lester, *Writing Research Papers* (3rd ed., 1980) at 49. This area is more fully developed in appendix 3.

221. See sections II and III, *supra*.

222. See section IV, *supra*.

223. See section VI, *supra*.

224. See section VII, *supra*.

225. Lester, *supra*, note 220.

## APPENDICES

### Appendix 1: Extracts From Applicable Regulations

1. Article 92, UCMJ, Failure to Obey Order or Regulation, 1 Aug 84, as changed on 15 May 86.
2. AFR 11-31, Boards of Officers, 18 Oct 85.
3. AFR 50-5, USAF Formal Schools, 1 Dec 87.
4. AU Sup 1 to AFR 50-5, USAF Formal Schools, 22 Feb 85.
5. AFR 111-9, Nonjudicial Punishment, 19 July 85.
6. AFR 120-4, Inspector General Investigations, 23 Dec 81.
7. AUR 55-6, Academic Integrity, 19 Nov 84.
8. ACSCR 53-10, Review Boards, 28 Oct 86.

### Appendix 2: Recommended Changes to Applicable Regulations

### Appendix 3: Recommended Changes to ACSC Research Handbook

### Appendix 4: Faculty Guide to Handle Suspected Plagiarism

### Appendix 5: Plagiarism Investigating Officer's Guide

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# APPENDIX

ONE

Extracts from Applicable Regulations

(b) Article 80—attempts

e. *Maximum punishment.*

(1) Striking or assaulting warrant officer. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) Striking or assaulting superior noncommissioned or petty officer. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(3) Striking or assaulting other noncommissioned or petty officer. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(4) Willfully disobeying the lawful order of a warrant officer. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(5) Willfully disobeying the lawful order of a noncommissioned or petty officer. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(6) Contempt or disrespect to warrant officer. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 9 months.

(7) Contempt or disrespect to superior noncommissioned or petty officer. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(8) Contempt or disrespect to other noncommissioned or petty officer. Forfeiture of two-thirds pay per month for 3 months, and confinement for 3 months.

f. *Sample specifications.*

(1) *Striking or assaulting warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 19 \_\_\_\_\_, (strike) (assault) \_\_\_\_\_, a \_\_\_\_\_ officer, then known to the said \_\_\_\_\_ to be a (superior) \_\_\_\_\_ officer who was then in the execution of his/her office, by \_\_\_\_\_ him/her (in) (on) (the \_\_\_\_\_) with (a) \_\_\_\_\_ (his/her) \_\_\_\_\_.

(2) *Willful disobedience of warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data), having received a lawful order from \_\_\_\_\_, a \_\_\_\_\_ officer, then known by the said \_\_\_\_\_ to be a \_\_\_\_\_ officer, to \_\_\_\_\_, an order which it was his/her duty to obey, did (at/on board—location), on or about \_\_\_\_\_ 19 \_\_\_\_\_, willfully disobey the same.

(3) *Contempt or disrespect toward warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data) (at/on board—location), on or about \_\_\_\_\_ 19 \_\_\_\_\_, [did treat with contempt] [was disrespectful in (language) (deportment) toward] \_\_\_\_\_, a \_\_\_\_\_ officer, then known by the said \_\_\_\_\_ to be a (superior) \_\_\_\_\_ officer, who was then in the execution of his/her office, by (saying to him/her, " \_\_\_\_\_," or words to that effect) (spitting at his/her feet) ( \_\_\_\_\_).

**16. Article 92—Failure to obey order or regulation**

a. *Text.*

"Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.”

b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

- (a) That there was in effect a certain lawful general order or regulation;
- (b) That the accused had a duty to obey it; and
- (c) That the accused violated or failed to obey the order or regulation.

(2) *Failure to obey other lawful order.*

- (a) That a member of the armed forces issued a certain lawful order;
- (b) That the accused had knowledge of the order;
- (c) That the accused had a duty to obey the order; and
- (d) That the accused failed to obey the order.

(3) *Dereliction in the performance of duties.*

- (a) That the accused had certain duties;
- ★(b) That the accused knew or reasonably should have known of the duties; and
- (c) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

c. *Explanation.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) *Authority to issue general orders and regulations.* General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Transportation, or of a military department, and those orders or regulations generally applicable to the command of the officer issuing them throughout the command or a particular subdivision thereof which are issued by:

- (i) an officer having general court-martial jurisdiction;
- (ii) a general or flag officer in command; or
- (iii) a commander superior to (i) or (ii).

(b) *Effect of change of command on validity of order.* A general order or regulation issued by a commander with authority under Article 92(1) retains its character as a general order or regulation when another officer takes command, until it expires by its own terms or is rescinded by separate action, even if it is issued by an officer who is a general or flag officer in command and command is assumed by another officer who is not a general or flag officer.

(c) *Lawfulness.* A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it. See the discussion of lawfulness in paragraph 14c(2)(a).

(d) *Knowledge.* Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense.

(e) *Enforceability.* Not all provisions in general orders or regulations can be enforced under Article 92(1). Regulations which only supply general guidelines or advice for conducting military functions may not be enforceable under Article 92(1).

(2) *Violation of or failure to obey other lawful order*

- (a) *Scope.* Article 92(2) includes all other lawful orders which may be issued by a member of the

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armed forces, violations of which are not chargeable under Article 90, 91, or 92(1). It includes the violation of written regulations which are not general regulations. *See also* subparagraph (1)(e) above as applicable.

(b) *Knowledge*. In order to be guilty of this offense, a person must have had actual knowledge of the order or regulation. Knowledge of the order may be proved by circumstantial evidence.

(c) *Duty to obey order*.

(i) *From a superior*. A member of one armed force who is senior in rank to a member of another armed force is the superior of that member with authority to issue orders which that member has a duty to obey under the same circumstances as a commissioned officer of one armed force is the superior commissioned officer of a member of another armed force for the purposes of Articles 89 and 90. *See* paragraph 13c(1).

(ii) *From one not a superior*. Failure to obey the lawful order of one not a superior is an offense under Article 92(2), provided the accused had a duty to obey the order, such as one issued by a sentinel or a member of the armed forces police. *See* paragraph 15b(2) if the order was issued by a warrant, noncommissioned, or petty officer in the execution of office.

(3) *Dereliction in the performance of duties*.

(a) *Duty*. A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service.

★(b) *Knowledge*. Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.

(c) *Derelict*. A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person's duties or when that person performs them in a culpably inefficient manner. "Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. "Negligently" means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. "Culpable inefficiency" is inefficiency for which there is no reasonable or just excuse.

(d) *Ineptitude*. A person is not derelict in the performance of duties if the failure to perform those duties is caused by ineptitude rather than by willfulness, negligence, or culpable inefficiency, and may not be charged under this article, or otherwise punished. For example, a recruit who has tried earnestly during rifle training and throughout record firing is not derelict in the performance of duties if the recruit fails to qualify with the weapon.

d. *Lesser included offense*. Article 80—attempts

e. *Maximum punishment*.

(1) *Violation or failure to obey lawful general order or regulation*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Violation or failure to obey other lawful order*. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

[Note: For (1) and (2), above, the punishment set forth does not apply in the following cases: if in the absence of the order or regulation which was violated or not obeyed the accused would on the same facts be subject to conviction for another specific offense for which a lesser punishment is prescribed; or if the violation or failure to obey is a breach of restraint imposed as a result of an order. In these instances, the maximum punishment is that specifically prescribed elsewhere for that particular offense.]

(3) *Dereliction in the performance of duties*.

(A) Through neglect or culpable inefficiency. Forfeiture of two-thirds pay per month for 3 months and confinement for 3 months.

18 October 1985

**Administrative Practices**  
**BOARDS OF OFFICERS**

This regulation applies to board proceedings on: (1) separating military personnel from the Air Force; (2) imposing pecuniary liability on military and civilian personnel except pursuant to AFR 176-2; or as to military personnel for Article 139, Uniform Code of Military Justice (UCMJ) claims under AFR 112-1; (3) taking any other administrative action where it applies to Air Force military personnel either by regulation or appointing orders. This regulation applies to U.S. Air Force Reserve (USAFR) and Air National Guard (ANG) units and members.

**1. Air Force Policy.** Because of the potential adverse consequences for a respondent, it is necessary to ensure that each respondent is afforded a full, fair, and impartial hearing.

**2. Explanation of Procedures To Implement Policy:**

a. Proceedings are conducted before a board of not less than three officers who must be senior in grade to the respondent (including a reserve grade if applicable). Board members are subject to challenge for cause only. If the number of members of the board is reduced to less than three, the convening authority appoints additional members.

NOTE: If the regulation that creates the entitlement to a board allows enlisted personnel to serve as members of the board, the procedures of that regulation concerning board membership are controlling.

b. A judge advocate certified according to Article 27(b), UCMJ, or, in ANG Boards, an ANG member designated a judge advocate, is appointed to the board as legal advisor (without vote). The legal advisor rules with finality on challenges for cause and all evidentiary and procedural matters with the following exception: he or she is without authority to dismiss any allegation against a respondent or to terminate the proceedings. The legal advisor may convene a hearing without board members to assist in clarifying issues.

c. A military respondent has the right to be represented before the board, free of charge, by either a detailed military lawyer or a military lawyer of his or her own choosing, if reasonably available. Any respondent may be represented at his or her own expense by civilian counsel. The govern-

ment is represented before the board by a recorder (without vote).

d. The recorder, at a reasonable time in advance of the convening of the board, delivers or dispatches to the respondent a written communication stating:

(1) The time and place of the convening of the board.

(2) The specific allegations to be investigated, in sufficient detail to enable a respondent to answer. Generalized statements must not be used except as required for the protection of classified information under security regulations or directives that apply.

(3) The name, organization, and station (if civilian, the address) of any witness expected to be called by the recorder.

(4) That arrangements will be made for the presence of military witnesses (or invitational travel orders issued to civilian witnesses who are not federal employees) requested by a respondent provided that:

(a) A timely request therefor is received.

(b) The witnesses, in the opinion of the legal advisor, can present relevant and material evidence.

(5) A respondent's rights regarding counsel as stated in c above.

**3. Evidentiary Rules:**

a. The general rule is that all matters that are relevant and material to an issue or inquiry are admissible. In this connection the following applies:

(1) A respondent cannot be compelled to testify against himself or herself nor may silence be used against the individual.

(2) A confession or admission by a respondent that was involuntarily made is not admissible. However, the fact that a respondent was not advised pursuant to Article 31, UCMJ, or an ANG respondent pursuant to the Fifth Amendment, U.S. Constitution, before a confession or admission does not necessarily make the admission or con-

Supersedes AFR 11-31, 23 August 1976. (See signature page for summary of changes.)

No. of Printed Pages: 3

OPR: 1AFCMH/C of Michael G. Longson

Approved by: Colonel Norman Schatz

Discontinue if:

fession inadmissible.

(3) Evidence obtained as a result of any search and seizure conducted by an individual or individuals, civilian or military, acting in an official capacity, is admissible provided the search was directed by an individual who in the normal course of events may authorize searches and seizures; or was authorized by regulation; or was conducted in connection with an arrest, detention, or apprehension.

(4) Hearsay evidence is admissible provided the legal advisor determines that there is adequate safeguard for truth. However, upon request, a respondent is afforded an opportunity at the hearing to confront an individual whose testimony was admitted as hearsay. Exceptions are instances where, because of lack of subpoena power, the individual cannot be compelled to attend; and instances where, because of inordinate distance or demands of the service, it is unreasonable for him or her to attend. In these cases a respondent then is afforded an opportunity to obtain a deposition from the individual for submission to the board. If a deposition cannot reasonably be obtained, a respondent is afforded an opportunity to obtain a sworn statement from (or propound interrogatories to) the individual for submission to the board. A respondent's failure to exercise the foregoing opportunities or his or her inability to do so does not affect the admissibility of hearsay evidence. If the deposition or sworn statement has not been produced, despite the good faith efforts of the respondent, the legal advisor advises the board that such a good faith effort has been undertaken and states the reasons that the deposition or sworn statement cannot be produced.

(5) Rules 501 through 512 of the Military Rules of Evidence regarding privileged communications apply.

(6) Results of polygraph tests are not admissible except with the consent of both the respondent and the recorder and the approval of the legal advisor.

(7) Each witness appearing before a board will be sworn or his or her affirmation taken. One of the following forms must be used:

You swear that the evidence you shall give in the matter now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.

or

You affirm that the evidence you shall give in the matter now in hearing shall be the truth, the whole truth, and nothing but the truth.

(8) In resolving all other evidentiary matters,

the legal advisor must give due consideration to the fact that administrative proceedings are not bound by the formal rules of evidence prescribed for trials by courts-martial; the requirement for a full and fair hearing; the requirement for an impartial determination by the board; and the requirement that there is adequate safeguard for truth.

b. The standard of proof to be used in arriving at determinations in administrative proceedings conducted under this regulation must be by a preponderance of the evidence. Findings and recommendations (if required) of the board must be concurred in by a majority of the voting members of the board and supported by a preponderance of the evidence.

c. Boards may not enter findings contrary to matters previously adjudicated in courts-martial and civilian court convictions. This does not preclude the respondent from presenting matters in mitigation, extenuation, and explanation. Without limiting the respondent's right to a full and fair hearing, the legal advisor may impose reasonable restrictions on evidence introduced by the respondent that conflicts with previously adjudicated matters.

d. A respondent has the right to be present at the board proceedings (except during the board's closed deliberations) and to present evidence in his or her own behalf with the following qualifications:

(1) A board may be convened to hear matters against a respondent who is in a deserter status. A military lawyer must be appointed to protect the respondent's interests and present evidence in the individual's behalf.

(2) A board may be convened to hear matters against a respondent who is in civilian confinement. If a respondent does not exercise the right to select a military lawyer, the convening authority appoints a military lawyer to represent him or her and present evidence in his or her behalf.

e. There must be a record of the proceedings, a copy of which will be provided to the respondent. The record must include at least a summarized transcript of the proceedings, as well as the evidence admitted and the findings and recommendations. The board report is authenticated by the legal advisor. If after the hearing the legal advisor is not reasonably available, the report is authenticated by the president and recorder, and the reason for the substitution stated.

f. Before final action is taken, the staff judge advocate for the commander taking final action reviews the record and provides the commander in

writing his or her opinion, stating whether the procedures stated herein have been complied with and

whether the findings are supported by a preponderance of the evidence of record.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

CHARLES A. GABRIEL, General, USAF  
Chief of Staff

JAMES H. DELANEY, Colonel, USAF  
Director of Administration

SUMMARY OF CHANGES.

This revision changes composition of board membership (para 2a); changes rules regarding privileged communication (para 3a(5)); deletes Article 15 determinations (para 3c); and deletes the requirement to attach the legal review to the record (para 3f).

(3) Oversea commands are responsible for funding of transportation and per diem of personnel attending training courses outside CONUS.

**c. TDY Incident To or En Route PCS:**

(1) Reference AFM 170-1, volume I. The funding for TDY-en route PCS is the responsibility of ATC or AFSC (HSD) as appropriate, only when AFMPC imposes the training requirement in the PCS assignment instructions or if the gaining command receives a training quota from ATC or AFSC and so notifies the losing command's CBPO. MAJCOMs must fund for TDY when they impose a TDY-en route-PCS category 1 training requirement without an appropriate quota, or a category 2 training requirement.

NOTE: Category 1 training requirement — Courses conducted by ATC to carry out the USAF training program and by AFSC for the medical education program. Category 2 training requirement — Courses conducted outside the scope of the Air Force training program such as command operated schools and OSI training schools.

(2) Transoceanic travel costs associated with directed TDY to CONUS incident to PCS are considered a PCS expense. In PCS to CONUS and from OS to OS east or west, or vice versa, funding to port of entry in the CONUS for the directed TDY is a proper charge to the funds applicable to the PCS movement.

(3) When TDY is incident to PCS but the travel is performed under separate orders and the person returns to his or her current duty station before the PCS order is carried out, the order directing such TDY must:

(a) State that the TDY is incident to PCS.

(b) Identify the gaining MAJCOM, and

(c) Reference the personnel PCS assignment instruction which established the requirement.

(4) Fund citations for use on travel orders are in table 1-3 when the gaining command imposes the training requirement. When the Category 1 training requirement is imposed by AFMPC reassignment instruction, refer to the appropriate chapter of the command conducting the training (ATC-chapter 3, AU-chapter 4, AFSC(HSD)-chapter 2).

**d. TDY Funding of Unqualified Students:**

(1) When students are returned to their parent command as a result of being unqualified to enter a USAF training program course (c (1), above), all TDY expenses to and from the school concerned will be borne by the parent command. The organization selecting and publishing orders on the student concerned will ensure the orders are amended to show the parent unit fund citation. A copy of this amendment must be sent to HQ ATC/ACFAG within 30 days. For HSD courses, send copies of amendments to 6570 ABG/ACFPT.

(2) School administrators will ensure all possible actions are taken to rectify any discrepancies that may disqualify a student from entering training. The major command concerned and the student's parent organization will be informed before directing an unqualified student to return to his or her permanent duty station.

**1-42. Transportation of Airman Dependents and Household Goods (table 1-4).**

**Section G—Responsibilities for USAF Schools and Faculty Boards**

**1-43. Purpose and Operation of USAF Schools.** USAF schools conduct formal individual training and education. These schools are operated by Human Systems Division (HSD), Air Training Command (ATC), or Air University (AU), and when authorized by HQ USAF, they are operated by other major commands (MAJCOMs).

**1-44. Specific Responsibilities for USAF Schools:**

**a. HQ USAF:**

(1) Directs, assists, and monitors USAF formal schools.

(2) Authorizes the establishment of schools and prescribes or approves school missions and curricula.

(3) Approves prerequisites and procedures for selection of students to USAF schools.

(4) Approves procedures for processing individuals whose student status has been terminated.

**b. MAJCOMs:**

(1) Develop training and education programs and operate schools under their jurisdiction.

(2) Appoint a commandant for each school within the command. (Authority to appoint a commandant may be delegated to a subordinate commander having jurisdiction over the school.)

(3) Appoint a faculty board for each school in the command and determine board procedures within the scope of applicable Air Force regulations. Authority to appoint a board and determine its procedures may be delegated to a commissioned officer at any level of command. In ATC undergraduate flying wings with a dual or multiple deputy structure, the deputy commander for operations/navigator training or the training group commander may be designated as the appointive authority for faculty boards.

(4) Ensure that each faculty board proceeding which recommends disenrollment of a student is reviewed for completeness, standardization, clarity and, unless otherwise provided in this regulation, for legal sufficiency, and ensure that findings and recommendations are substantiated. Authority to ensure these criteria are met may be delegated except that the review must be accomplished at least one command level above the commandant of the school.

(a) If authority to appoint the faculty board is retained by the major commander, the major commander will review the board proceedings.

(b) If authority to appoint the faculty board is delegated, reviewing action must be accomplished by a commissioned officer at least one command level above that of the school commandant.

(c) In ATC undergraduate flying training wings with a dual or multiple deputy structure, the wing or vice wing commander may be designated as the reviewing authority of board proceedings.

(5) Approve or disapprove each faculty board's findings and recommendations (except see (c) below). This authority may be delegated except that it must be at least one command level above the commandant of the school.

(a) When the faculty board appointive authority is below the command level which approves board proceedings, the appointive authority recommends approval or disapproval and forwards the proceedings to the approving authority.

(b) In ATC undergraduate flying training wings with a dual or multiple deputy structure, the wing or vice wing commander may be designated as the approving authority of board proceedings.

(c) In no case will a member of a faculty board approve or disapprove faculty board proceedings.

(6) Determine whether or not to use faculty board proceedings if student status is terminated for disciplinary reasons.

(7) Contact school commandants and arrange for withdrawal of temporary duty (TDY) students when the parent units of the students have been alerted for overseas movement or in other circumstances as specified in this regulation.

**c. Commandant of School:**

(1) Supervises the school and is responsible for all matters of instruction and school administration. If the commander of the unit



responsible for administration and instruction at the school is also the commandant. Designation as commandant or use of that title is not required to comply with this regulation.

(2) Directs the faculty board to meet.

(3) Refuses enrollment and returns to former base without faculty board action. Air Force military personnel who, upon reporting as students at a USAF school, are found to lack the course prerequisites, except those individually selected and approved by HQ USAF.

(4) Ensures that each student is periodically advised of his or her progress and counseled privately when progress is less than satisfactory.

(5) Terminates the student status of an individual when faculty board proceedings recommending disenrollment are approved.

(6) Maintains records of enrollment and scholastic achievements of all students.

(7) Prepares and submits progress reports and other data required by HQ USAF.

(8) Issues a certificate of recognition, diploma, or other memento to each graduate, including each international student.

d. **Commander, Air Training Command; Commander, Air University; Training Center Commanders (ATC); Commandant, AFIT (AU); and Commander, Human Systems Division (HSD):**

(1) Communicate directly with the major commander who requests withdrawal or reentry of TDY students, or withdrawal of TDY students when the parent units of the students have been alerted for overseas movement.

(2) Determine whether reentry of students in the same class from which withdrawn is warranted. Allocation of student quotas for reentry in subsequent classes of a course must be approved by HQ USAF/DPPE.

#### 1-45. **Faculty Board (Other Than Flying Training)—Requirement, Function, Membership, and Proceedings:**

a. **Requirement for Faculty Board.** The requirement for a faculty board for nonflying training is optional at the discretion of local commanders, commandants, or other appointing authority. Faculty boards are not convened when the review process for administrative eliminations is considered adequate to develop facts concerning the individual case for decision by the approving authority. The requirements for faculty boards apply to the Senior NCO Academy, but not to NCO academies, leadership schools, and preparatory courses being conducted by MAJCOMS. The review process for these schools is described in AFR 50-39, NCO Professional Military Education.

b. **Function of the Board.** The faculty board will consider matters referred to it by the appointing authority concerning the possible elimination of a student from a course. The board is convened at the discretion of the appointing authority to advise the approving authority on those matters referred to it.

c. **Waiver.** A student may request waiver of faculty board action by submitting a request in writing to the appointing authority. If the waiver is granted, the subject is administratively disenrolled from training.

d. **Membership of the Board.** Faculty board membership may be any combination of commissioned officers, warrant officers, chief master sergeants, senior master sergeants, and civilian officials, provided that a minimum member outranks the student whose case is before the board.

(1) When a faculty board is convened at a field training detachment (FTD) location for the purpose of reviewing cases where AAF courses are involved and sufficient numbers of eligible personnel in the ranks defined above are not available, master sergeants and technical sergeants may be included as faculty board members.

(2) When a student is being considered for disenrollment from a

precommissioning course, board membership will consist of commissioned officers.

(3) When a military student is considered for disenrollment, board members must be military personnel. The Air Force Institute of Technology (AFIT) may, however, appoint civilians filling the positions of director for academic affairs, director of admissions, and dean or director of an AFIT school to its boards and may further appoint civilian faculty members to boards within its schools. Other exceptions to the all-military requirement must have advance approval of HQ USAF/DPPE.

(4) When a civilian student is considered for disenrollment, at least one member of the board must be a civilian.

e. **Board Proceedings.** The decision to convene a faculty board usually raises the question of whether further retention of the student in the Air Force or on active duty is in the best interests of the Air Force. Therefore, the appointing authority should consider all of the evidence in the case file and determine if separation may be indicated. Occasionally, the circumstances of a case will require the faculty board to be convened under AFR 11-31, Board of Officers. Use the following guide to determine if AFR 11-31 procedures should be used.

(1) Faculty boards will be conducted in accordance with AFR 11-31 when:

(a) The board was convened as a result of student misconduct and the inquiry is into the nature of the misconduct (including whether there is misconduct) rather than the affect of the misconduct on academic proficiency.

(b) The student is an officer and the inquiry will determine if the deficiency resulted from factors within the student's control.

(c) The appointing authority deems the procedures warranted and imposes the requirement.

(2) Other than boards listed above, all faculty boards convened under this regulation are specifically exempt from the requirements of AFR 11-31.

(a) AFR 11-31 board proceedings are not required when the inquiry is limited to reviewing academic deficiencies or substandard performance affecting academic achievement.

(b) AFR 11-31 board proceedings are not required when the student is an officer within the category described in AFR 36-12, paragraph 3-29, and who, as a result of course elimination, may be released from active duty.

(c) AFR 11-31 board proceedings are not required when the inquiry is into deficiencies due to factors beyond the student's control.

(3) Nothing in this regulation shall be construed so as to require that faculty board proceedings be completed before a commander initiates disciplinary or other administrative actions (including involuntary discharge action) when the same incident or incidents giving rise to a faculty board also form an independent basis for other action. Commanders are encouraged to swiftly pursue other appropriate actions, when warranted, concurrently with faculty board review.

(4) Faculty board findings and recommendations are made by secret written ballot and determined by a majority of voting board members.

f. **Legal Reviews.** Records of boards convened under AFR 11-31 will be submitted to the staff judge advocate for legal review. Other records of proceedings may be reviewed for legal sufficiency if required by the approving authority.

#### 1-46. **Faculty Board (Flying Training)—Requirement, Function, Membership, and Proceedings:**

a. **Requirement for Faculty Board.** The requirements for faculty boards apply to all undergraduate pilot and navigator training courses. When a rated officer enrolled in a formal USAF flying training course

fails to meet training standards, the matter will be processed in accordance with AFR 60-13, paragraph 4-4c.

b. **Function of the Board.** The faculty board will consider all matters referred to it by the appointing authority concerning the possible elimination of a student from a course, except as indicated below. The board is convened at the discretion of the appointing authority to advise the approving authority on those matters referred to it.

(1) Faculty board action is not mandatory to disenroll a student from formal training. Disenrollment from training by administrative action in lieu of faculty board proceedings is authorized.

(2) A student may waive faculty board action by submitting a request in writing to the appointing authority. If the waiver is granted, the student is administratively disenrolled from training. Unless specifically waived, all students will be processed through a faculty board action.

c. **Membership of the Board.** A faculty board must be comprised of at least three rated officers on active operational flying status who are instructor qualified and each member must be higher in grade than the student whose case is before the board.

d. **Board Proceedings.** The decision to convene a faculty board usually raises the question of whether further retention of the student in the Air Force or on active duty is in the best interests of the Air Force; therefore, the appointing authority should consider all of the evidence in the case file and determine if separation may be indicated. Occasionally, the circumstances of a case will require the faculty board to be convened under AFR 11-31, Board of Officers. Use the following guide to determine if AFR 11-31 procedures should be used.

(1) Faculty boards will be conducted in accordance with AFR 11-31 when:

(a) The board was convened as a result of student misconduct and the inquiry is into the nature of the misconduct (including whether there is misconduct) rather than the effect of the misconduct on academic proficiency.

(b) The student is an officer and the inquiry will determine if the deficiency resulted from factors within the student's control.

(c) The appointing authority deems the procedures warranted and imposes the requirement.

(2) Other than boards listed above, all faculty boards convened under this regulation are specifically exempt from the requirements of AFR 11-31.

(a) AFR 11-31 board proceedings are not required when inquiry is limited to reviewing academic deficiencies or substandard performance affecting academic achievement.

(b) AFR 11-31 board proceedings are not required when the student is an officer within the category described in AFR 35-12,

paragraph 3-29, and who, as a result of course elimination, may be released from active duty.

(c) AFR 11-31 board proceedings are not required when the inquiry is into deficiencies due to factors beyond the student's control.

(3) Nothing in this regulation shall be construed so as to require that faculty board proceedings be completed before a commander initiates disciplinary or other administrative actions (including involuntary discharge action) when the same incident or incidents giving rise to a faculty board also form an independent basis for other action. Commanders are encouraged to swiftly pursue other appropriate actions, when warranted, concurrently with faculty board review.

(4) Faculty board findings and recommendations are made by secret written ballot and determined by a majority of voting board members.

e. **Legal Reviews.** Records of boards convened under AFR 11-31 will be submitted to the staff judge advocate for legal review. Other records of proceedings may be reviewed for legal sufficiency if required by the approving authority.

1-47. **Distribution of Board Proceedings.** One copy of each approved faculty board proceeding or approved waiver will be forwarded by the approving authority as follows:

a. For Air Force students in all military grades disenrolled from a course:

(1) To the student's training unit commander.

(2) To HQ ARPC/DSFM, Denver CO 80280, when elimination results in release from EAD. Forward with the UPRG documents in accordance with AFR 35-44, table 2-3, rule 2. When elimination from training occurs and retention on EAD is advised, forward to HQ AFMPC/DPMDOM1, Randolph AFB TX 78150-6001, for inclusion in the member's master personnel record.

b. For Air Force civilian employees disenrolled from a course, to the servicing CCPO.

c. For US Government students other than Air Force, to the agency which authorized their attendance, usually this will be the authority given in the individual's course orders.

d. For international students, to the appropriate USAF office responsible for administering and monitoring the individual's training (in the case of Security Assistance Program Training (SAPT) students, procedures specified in AFR 50-29 apply); the USAF office in turn will forward board proceedings as appropriate to the Military Assistance Advisory Group (MAAG), USAF mission, US Air Attache, or official foreign representative.

Training

USAF FORMAL SCHOOLS

AFR 50-5, 1 March 1984, is supplemented as follows:

This publication is affected by the Privacy Act of 1974. Each form that is subject to the provisions of AFR 12-35, paragraph 30, and required by this publication, contains a Privacy Act Statement either incorporated in the body of the document or in a separate statement accompanying the document.

~~1-42b(3)(a)~~ The commandant/commander of each of the following Air University organizations will appoint one or more faculty boards as necessary:

1. Air War College (AWC).
2. Air Command and Staff College (ACSC).
3. Air Force Institute of Technology (AFIT).
4. Squadron Officer School (SOS).
5. Educational Development Center (EDC).
6. Leadership and Management Development Center (LMDC).

7. USAF Senior NCO Academy (USAFSNCOA). USAFSNCOA CC may appoint the faculty board providing the respondent is junior in rank, otherwise AU/CC will appoint board members.

(b) At the discretion of AFIT/CC, the dean or associate dean of AFIT's resident schools will appoint a faculty board to take action within his/her separate activity. AFIT's dean, Civilian Institutions (CI), will not appoint faculty boards. CI students are disenrolled per the administrative provisions of this regulation and/or considered for appropriate action under AFR 36-2, AFR 36-12, AFR 39-10, or the UCMJ.

(c) No faculty board is appointed for Extension Course Institute (ECI). Elimination of students from ECI is accomplished under the provisions of AFR 50-12.

1-42b(4)(d) (Added) AFIT/CC is the reviewing authority for faculty boards appointed by subordinate schools. AU/CC is the reviewing authority for all other AU schools.

1-42b(5)(d) (Added) AU/CC is the approval authority for all faculty board proceedings except AFIT faculty boards not conducted under the provisions of AFR 11-31. Forward

AFIT faculty boards meeting the provisions of AFR 11-31 through HQ AU/XP to AU/CC for approval/disapproval.

1-42b(6). The authority to make this determination is delegated to school commandants. However, commandants will coordinate with HQ AU/XP and the staff judge advocate (3800 ABW/JA or 2750 ABW/JA) before making a decision.

1-42c(3)(a) A TDY student who reports for a course and is found ineligible because he or she fails to meet published prerequisites in education, job position, age, grade, security clearance, etc., is returned to his or her former base without censure. The commandant will determine the disposition of a TDY student who is otherwise deficient because of poor physical conditioning or failure to comply with either personal appearance standards (AFR 35-10) or weight standards (AFR 35-11). Notify the parent organization and this headquarters (HQ AU/XP/DP) without delay, with full particulars given, including disposition. TDY students required to be on extended absence from school due to emergency leave, hospitalization, etc., may also be released from school and returned to their home stations without censure. Notify their parent unit to amend travel orders reflecting the TDY charge to the fund cite of the parent unit.

(b) PCS students disenrolled from courses are reported for immediate reassignment as follows:

1. AFIT will report directly to HQ AFMPC by message with two information copies to this headquarters (HQ AU/XP/DP).

Supersedes AFR 53-15, AU Sup 1, 29 October 1976.

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OFR XPZ (11 Col L, E, Taber)

Approved by: Col F. C. Norrell

Editor: Sandra L. Rentroe

Distribution: EX (HQ USAF MPPTS, HQ AFISC/DAP)

2. Courses of less than 30 academic days duration—the individual has been assigned to primary duty as an instructor for two or more course periods in the course for which credit is being awarded or the individual has been assigned to primary duty as an instructor and the instructor training program dictates the completion of all requirements in the course for which credit is being awarded.

3. For AWC and ACSC. All permanently assigned faculty officers who serve in any capacity or combination of ~~capacity or combination of~~ capacities for 2 or more academic years, and meet the requirements for primary duty as a resident instructor, are eligible for a resident diploma.

4. The course does not contribute toward an academic degree conferred by the organization.

5. The individual meets all criteria for entrance required of students normally enrolled in the course. (The commandant may waive age, grade, and maximum service provisions in the entrance criteria for a course.)

(b) Requests for waiver of the above requirements must be approved by this headquarters (HQ AU/XPZ). Full justification for waiver of the provision that an individual must have been assigned to *primary duty as an instructor* must be furnished. Normally, a faculty or staff member of the school (course) for which graduate credit is being requested will have performed instructional or instructor-related duties to the extent that significant recognition will have been given to those duties in effectiveness reports.

(c) After approval by the commandant of a school (and by this headquarters (HQ AU/XPZ), if applicable), qualified instructor graduates are awarded a diploma, reported on rosters of graduates, and appropriate entries are made in personnel records.

(d) Faculty members awarded resident credit will not incur an additional active duty service commitment as a result of that credit.

1-42c(10)Added). Review and indorse disenrollment for hardship reasons. The commandant of schools with TDY students will review and indorse all requests for disenrollment for hardship reasons to the parent major command of the student concerned. The indorsement must contain a recommendation for approval/disapproval and any other comments deemed appropriate. Forward an information copy to this headquarters (HQ AU/XPZ). International officer exception. Forward requests for disenrollment for international students to Maxwell Air Force Base ITMO (EDC FAS) who, in turn, will forward them to FMTAG for approval/disapproval.

2-4.1.4(11)Added). AWC and ACSC will advise HQ AU/XP before initiating action, other than faculty board

action, which could result in the disenrollment of a PCS student from their programs. Information furnished HQ AU/XP will include the student's name, grade, SSAN, and a brief summary of reasons for the proposed action. International officer exception. Forward requests for disenrollment for international students to the Maxwell Air Force Base ITMO (EDC FAS) who, in turn, will forward them to FMTAG for approval/disapproval.

1-43a. Failure at any school when attendance is at government expense and when such failure can be reasonably traced to factors over which an officer or enlisted person had control may substantiate administrative separation in accordance with AFR 36-2 or AFR 39-10, respectively. Accordingly, faculty board action is considered appropriate when the circumstances surrounding his or her pending elimination from an AU school indicate that discharge action may be warranted. In these instances, compliance with AFR 50-5, paragraph 1-43c(3), is necessary.

1-43a(3)(a). Faculty board action is specifically authorized in any instance where a student fails to meet the minimum academic requirements. For international officers: Before convening a faculty board, the school must notify the Maxwell Air Force Base ITMO (EDC FAS) who, in turn, notifies the country liaison officer and FMTAG of the pending faculty board in accordance with AFR 50-29, paragraph 3-27.

(b) Commandants are delegated the authority to disenroll students by administrative action. Commandants may secure the advice of HQ AU/XP before student disenrollment. The following are some examples where administrative action is appropriate.

1. When an enrolled student does not meet established eligibility requirements (includes physical condition).

2. In the case of death of a student.

3. When a student is being separated or retired from the Air Force for reasons not related to school status.

4. When an AFIT Civilian Institution student fails to meet academic standards, and the failure is not due to factors over which the student had control, or where the student has disenrolled/dropped out from a Civilian Institution.

5. When, due to extended absence or inability to perform duties as a student under circumstances over which the student did not have control. Although a faculty board is not required in these circumstances, one may be held to assist in determining whether a student can fulfill requirements for graduation. A statement from the base

hospital should be obtained in cases involving a medical incapacity of students.

6. When the commandant, AFIT, has determined that an AFCP or CSEP student does not possess the qualities required for commissioning (reference AIR 53.20 paragraph 14).

7. When a student indicates, either through his/her words or actions, the willful intention not to satisfactorily participate in or complete the school's program.

8. When a student violates AU policy on academic integrity as defined in AUR 53.6, or the policy of nonattribution as defined in AUR 53.10.

1-43b(8) Added: Faculty board membership may include, in nonvoting members, necessary advisors including an educational advisor, legal advisor, and such other advisors as deemed appropriate. For international officers, the faculty board membership will include the AU TMO (HQ AU XP/A) and the country liaison officer as nonvoting members. The Maxwell AFB TMO (EDC/EAS) will act in the capacity of the AU TMO if he/she is not available.

1-43b(9) Added: Suggested formats and procedure guides for faculty boards not required to be conducted in accordance with AFR 11-31 are provided at attachments 1, 2, and 3.

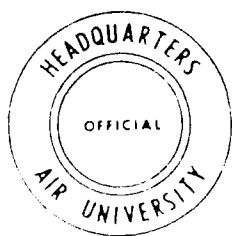
9. The commandant, with the advice of the staff judge advocate (3800 ABW JA or 2750 ABW JA), will determine if the provisions of AFR 11-31 apply. If the commandant

determines the provisions of AFR 11-31 are applicable, transcribe the board proceedings verbatim. Suggested procedural formats are at attachments 4-8.

(c) The following procedures will apply to AU school located at Maxwell Air Force Base and Gunter Air Force Station in faculty board proceedings conducted in accordance with AFR 11-31. Discuss the nature of the case with 3800 ABW JA who will arrange for a legal advisor, recorder, military defense counsel, and reporter. AFIT should obtain similar support from the staff judge advocate, Wright-Patterson AFB (OH). If requested by 3800 ABW CC, the commandant of the respondent's school will provide a recorder or assistant recorder and administrative assistance.

(d) In faculty boards where the requirements of AFR 11-31 are applicable and it is considered within the best interest of the school that the student be suspended from class pending the outcome of the faculty board, notify HQ AU XP of the suspension.

1-43d(1) Forward faculty board proceedings to HQ AU XP (original plus three copies) within 15 calendar days. Faculty board proceedings approved by AFIT/CC are distributed directly by AFIT with two information copies to HQ AU XP. For international officers: Faculty board proceedings are forwarded to AU TMO (HQ AU XP/A) with one copy to HQ AU XP.



THOMAS C. RICHARDS, Lt Gen, USAF  
Commandant, Air University

THOMAS C. RICHARDS, Lt Gen, USAF  
Commandant

#### 8 Attachments

1. Letter to Student, Not Conducted in Accordance with AFR 11-31
2. Suggested Format for Faculty Boards Not Held in Accordance with AFR 11-31
3. Procedure Guide for Faculty Boards Not Conducted in Accordance with AFR 11-31
4. Suggested Format for Letter of Notification for Faculty Board Held in Accordance with AFR 11-31
5. Procedure Guide for Faculty Boards Conducted in Accordance with AFR 11-31
6. Suggested Preliminary Instructions for Faculty Boards Held in Accordance with AFR 11-31

- If a member's effective date may be designated as a later date in an action imposing punishment or vacating the suspension. For example, if a member is already undergoing a punishment of restriction or correctional custody, the effective date of the new punishment of restriction or correctional custody may be designated to coincide with the termination of the earlier punishment of restriction or correctional custody.
- ★ The effective date of any reduction in grade or forfeiture, and the new date of rank (DOR) in the grade to which a member is reduced is the date the commander signs the imposition of punishment.

(2) If the member accepts nonjudicial punishment proceedings and requests a personal appearance, the member is entitled to (see back of AF Forms 3070 and 3071):

(a) Be informed of his or her rights according to Article 31(b).

(b) Be informed orally or in writing of the evidence against the member relating to the misconduct alleged.

(c) Examine any relevant documents or physical objects on which the commander intends to rely in deciding whether or how much punishment to impose.

(d) Be accompanied by a spokesperson provided or arranged for by the member.

(e) Have present relevant witnesses who are reasonably available and can be presented without legal process.

(3) At the member's request, the personal appearance will be open to the public, but the commander may, even over the member's objection, open it to the public without such a request. However, the personal appearance will be closed to the public if required by military exigencies or security considerations. If it is open, the commander may prescribe reasonable limitations on the number of persons present.

(4) Except as provided in (5) below, the personal appearance will be before the commander imposing punishment.

(5) If the commander imposing punishment is unavailable or is prevented by extraordinary circumstance from seeing the member, the personal appearance will be before a person designated by the commander. In that case, the person designated by the commander sends a summary of the presentation, with copies of all documents presented, to the commander who will impose punishment. The latter considers this file before acting on the case.

(6) The member is allowed 3 duty days (72 hours) or longer on written justification, to reply to the notification of initiation of nonjudicial punishment proceedings.

(7) The member will be encouraged to take full advantage of this time to consult with legal counsel, to decide whether to accept punishment and, if not, to prepare matters in defense, extenuation, or mitigation.

(2) If a member does not state within the allotted time whether he or she will accept nonjudicial punishment, the commander may proceed with the punishment, noting the member's failure to respond in the language imposing punishment in block 6b of AF Form 3070 or 3071.

★ (3) The term "duty days" refers to the member's normal duty days. For example, if the member's normal duty days include Saturday or Sunday, those days are included in the allotted time for the member's reply. Thus, service at 0900 hours on Friday would require return by 0900 hours on Monday.

k. Acceptance of nonjudicial punishment proceedings is not a plea of guilty to the described offense(s). Accordingly, the commander must carefully consider all matters submitted in defense.

(1) After such consideration, the commander will indicate in block 6 of AF Form 3070 or 3071 whether he or she has determined:

(a) That the member did not commit the offense(s) alleged and that the proceedings are terminated. If the commander terminates the proceedings, a copy of the AF Form 3070 or 3071 will be sent to the servicing SJA for Automated Military Justice Analysis and Management System (AMJAMS) recording purposes. Disposal of the remaining copies, and the servicing SJA copy after recording is accomplished, will be determined locally.

(b) That the member committed one or more of the offense(s) alleged, (offenses deemed not to have been committed will be lined out and initialed by the commander).

(c) That the member committed one or more lesser included offense(s) rather than the offense described.

★ (d) That the member committed one or more of the offenses (or lesser included offenses) but, in light of matters submitted in extenuation and mitigation, the proceedings are terminated in favor of other administrative action.

(2) Before changing to a lesser included offense, the commander should consult the SJA.

(3) The decision as to appropriate punishment should be discussed with the SJA after the member has had an opportunity to present matters in defense, mitigation, or extenuation. It never can be made properly until after careful considera-

## Chapter 2

### AUTHORITY AND RESPONSIBILITIES

#### Section A—Authority and Jurisdiction of Investigating Officer

**2-1. The Investigating Officer.** The investigating officer is a personal representative of the appointing authority. The directive authorizing the person to conduct the investigation gives him or her the necessary authority. This authority extends to all subordinate echelons of the command and requires the compliance and cooperation of subordinate commanders.

a. The investigating officer's official actions are not answerable to any subordinate commander. However, personnel designated to conduct investigations must be constantly tactful and discrete in discharging their responsibilities.

b. Recommendations, if directed for inclusion in reports of investigation, constitute directives for compliance by subordinate commands when approved by the appointing authority.

c. As a rule, the investigating officer is senior in grade to the person or persons being investigated to include subordinate commanders, if they potentially are implicated.

**-2. Matters To Be Investigated.** Any subject whose treatment has a prescribing directive, but for which there is no guidance for report formatting, may follow this directive.

**-3. Criminal or Subversive Activities (See AFRs 24-6, 124-8, 124-11, and 124-12.):**

a. Matters that may involve crime, espionage, sabotage, treason, sedition, disloyalty, or disaffection are referred to the Air Force Office of Special Investigations (AFOSI).

b. This regulation applies to noncriminal activities. If any time during an investigation a question arises involving the area mentioned in a above, the Staff Judge Advocate must be immediately contacted.

c. The investigating officer must be familiar with AFRs 124-11 and 124-12, which prescribe the responsibility for investigating counterintelligence matters and times of military and federal civilian jurisdiction is concurrent.

#### Section B—Qualifications and Duties of an Investigator

**4. Qualifications of the Investigator.** In conducting an investigation, the investigator must be impartial, unbiased, and totally objective. Start your investigation without any preconceived convictions. Remain objective.

**- Problem Solving.** Your understanding of and the ability to apply the basic techniques of problem solving gives you the self-confidence to function as an investigator. Your competence will also be recognized by those interviewed, thus improving your credibility.

b. **Dignity.** Maintain a proper military atmosphere and be dignified in your conduct and appearance. An unbiased, polite approach will encourage the cooperation of witnesses which is an essential part of your investigation.

c. **Fair Treatment.** In addition to your commander, you also have a responsibility to the persons who may be under investigation. For them, in particular, the investigation is a serious matter requiring rigid adherence to rules of justice and fair play. Their legal rights must be strictly observed and protected. Uniform Code of Military Justice (UCMJ), Article 31, for military personnel, and the Fifth Amendment to the Constitution for civilians and foreign nationals, guarantees that no person will be required to give testimony that is self-incriminating. This, however, is not enough. You must try to protect persons from any semblance of injustice that may be attributed to your procedures or actions.

d. **Factfinding.** You, as an investigator, are a factfinder. You must constantly remember that your superiors expect you to conduct a thorough investigation. Base your decisions and actions on the facts. The data that support these facts must be accurate and reliable. Therefore, you are both a researcher and a reporter of the facts.

**2-5. Negative Qualifications.** As an investigator, you are not a judge. Neither are you a jury, a prosecutor, nor a defense counsel. You have not been assigned to bring in a verdict, nor to impose punishment. Your charter does not require or expect that you prosecute any person and, by the same token, it does not expect that you will act for the defense. You have been assigned only to inquire into the factors bearing on a situation and to make an accurate and impartial report. You are not conducting a trial and must not assume that an investigation implies either the guilt or innocence of the persons involved.

**2-6. Your Duties as an Investigator.** Once appointed, and until completion, the investigation should become your primary duty. The investigation will be completed as expeditiously as possible. You are expected to perform five essential duties: you must determine the facts; report these facts; provide background information; and, when directed, draw conclusions and make recommendations.

a. **Determine the Facts.** This requires that you obtain all of the relevant facts necessary to prove or disprove the allegations. Factors bearing on both sides of a matter are equally important. A statement that is tainted with opinion or preconception is not a fact and has no place in the factual portion of the investigation or inquiry.

b. **Report the Facts.** Having obtained the facts, you must then accurately report them. This report must be carefully rendered. No matter how zealous or successful you may have been in assembling these facts, the effectiveness of your work will be largely destroyed if you are

unable to present them intelligibly. The report must be well organized and grammatically sound. A clearly stated report that gives all the facts without possibility of misinterpretation is much better than a lengthy report that wanders far afield and contains statements not pertinent to the issue. Clarity and brevity stimulate credibility.

c. **Provide Background Information.** Give any background information that will help the reviewer understand the relevance of the facts. In preparing the report, remember reviewers do not know what has transpired and are depending solely on the report to enlighten them. You may become so familiar with the case that you tend to take certain aspects of it for granted. Remember that the person who must review the report does not have the benefit of the knowledge you have gained.

d. **Draw Conclusions.** (Conclusions are only included in the written report when requested by the appointing authority.) Using the facts and background information,

analyze and evaluate the evidence and draw your conclusions. This must be done carefully since the conclusions are instrumental in shaping action to be taken. Just as the statement of facts in a report must be supported by the evidence, so must the conclusions be supported by the facts.

e. **Make Recommendations.** (Recommendations are only included in the written report when requested by the appointing authority.) Recommendations may be minor administrative remedies, or they may include drastic measures involving strong punitive actions. Therefore, consider your recommendations carefully. The person who reviews the report, as well as the commander who directed the investigation, must necessarily rely heavily on the recommendations that are made. These may serve as criteria for future action, may entail a statement of policy, or may affect the lives of the persons who are involved.



## Chapter 4

## CONDUCTING THE INVESTIGATION OR INQUIRY

## 4-1. How To Call Witnesses:

a. **Role of the Commander.** When the investigation is ready to begin, present to the commander of the base or the executive officer, a list of the witnesses you desire to interview, together with a time schedule for their appearance. Update this list as the investigation proceeds.

(1) Remember that you have no authority to summon these witnesses but must depend on the assistance of the commander. Courtesy requires that, insofar as possible, the interviews be arranged to avoid conflict with the normally assigned duties of witnesses.

(2) However, insist on the orderly progress of the investigation even though the presence of certain witnesses may interfere, to some extent, with their assigned duties.

(3) Under no circumstances should the commander or any other responsible person be permitted to supervise the attendance of witnesses or to interrogate or coach them on the evidence they are to give. If this should happen, you must promptly communicate with the commander and, if unable to obtain desired actions, communicate immediately with the appointing authority.

b. **Private Interviews.** The witnesses should be summoned to appear for private interview in the office that has been designated. The investigator should not have to look for the witnesses. Sometimes the investigator must interview the complainant or other witnesses without other persons knowing about it. These interviews must be left to your discretion.

c. **Number of Witnesses.** The number of witnesses to be examined to establish a fact must be left to your discretion. No purpose is served in the testimony of excessive additional witnesses.

d. **Confidential Testimony.** ~~If the witness desires~~ <sup>As required, 22-1</sup> confidentiality, the investigator must expressly promise this, and it must be recorded as part of the witnesses' testimony. Before promising witnesses confidentiality, investigating officers will consult with their servicing Staff Judge Advocate. Also, confidentiality will only be granted to witnesses when the necessary information cannot be otherwise obtained.

4-2. **Order of Interviewing Witnesses.** Senior officers may try to influence the testimony of subordinates. If the installation commander may become the subject of disciplinary action, the better course is to interview subordinate officers before higher-ranking officers are interviewed.

4-3. **Records of the Witness.** The witnesses may not always have the necessary papers with them. When you submit the list of people you want to interview, suggest that they be requested to bring all pertinent records. If the number of these records makes them difficult to move, interview the witnesses where the documents are located.

## 4-4. Presence of Third Parties:

a. **General Policy.** Except for the reporter and as required in c and d below, investigating officers will not permit the presence of a third party. Keep in mind that you are not conducting a trial, but an investigation. This investigation is official and its official character will be lessened by the presence of unnecessary persons. Privacy in interrogating a witness promotes confidence and prevents the possibility of embarrassment. A witness is reluctant to talk freely in the presence of a third party.

b. **If a Third Party Is Permitted.** If the presence of a third party is permitted, the record will specifically state this with the reason. Third parties whose presence may be required include interpreters. On occasion, also, a physician or nurse may be necessary if the physical condition of the witness requires it. When interviewing minors, do so in the presence of at least one of their parents.

c. **Examining Contractor Witnesses.** When examining employees of a DOD contractor, you may want to have a management representative present. In this way, problems relative to obtaining company records and determining company policies may be more readily resolved. Also, it may eliminate difficulties if the employee contends that rights under labor-management agreement have been abridged. However, the investigating official has authority to exclude third parties from the interview when such presence would tend to inhibit free and complete disclosures.

d. **Questioning Personnel of the Opposite Sex.** When the investigator and the witnesses are of the opposite sex and the interview may involve questions of a personal, sensitive nature, a third disinterested party may be present. The observer will be instructed that his or her duty is only to observe what takes place. Also, the observer is not to disclose, other than required by law or authorized by the investigating officer, what took place during the interview. This rule must be tempered by the good, mature judgment of the investigating officer. Misusing this provision could seriously hamper and invalidate an otherwise good investigation.

4-5. **Interfering With Witnesses.** The investigator will not tolerate intimidation or "coaching" of witnesses and must always be alert to detect any evidence of this. The validity of evidence depends a great deal on its candor; this, in turn, requires that the evidence be voluntarily given. False testimony given in fear of retaliation or for any other reason is valueless. If you believe that the witnesses have been interfered with, immediately report this to the commander with the request that the practice cease. If you do not secure the full cooperation of the commander or if the commander is suspected of being a party to the irregularities, immediately report this to your appointing authority for further guidance. Describe this action and the reasons in your report of investigation.

**4-6. Swearing of Witnesses:**

- a. Witnesses are sworn before the interview begins.
- b. The investigating officer is given authority by UCMJ, Article 136(b)(4), to administer oaths. The form of oath generally used is:

"Do you solemnly affirm (swear) that the testimony you are about to give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (so help you God)?"

**4-7. Swearing of Reporters, Stenographers, and Interpreters.** At the beginning of the investigation, the reporters, stenographers, and interpreters who have been appointed are sworn in. The form of oath generally used is:

"Do you affirm (swear) that you will faithfully perform the duties of (reporter, stenographer, interpreter) for this investigation (so help you God)?"

**4-8. Examining Witnesses.** This is one of your most important functions, since the facts that are finally reported are derived from it. For this reason, the examination must be carefully performed.

- a. **Cautioning the Witness.** Before beginning an interview, the witness must be cautioned that the investigation is official. Also, inform the witness not to discuss any part of the investigation with other personnel. Caution him or her that testimony will be taken verbatim and that "off-the-record" statements are not authorized.

- b. **Swearing the Witness.** After this informal briefing, the witness will be sworn and, if proper, advised of his or her rights. Advising witnesses of their rights may be omitted if their conduct will not come into question or their testimony will not be self-incriminatory. (For advice to a witness in varying circumstances, see chapter 9.)

- c. **Distinction Between Witnesses.** A distinction must be made between persons under investigation; that is, potential accused, and persons whose relationship to the investigation cannot possibly involve them as coactors or coaccused. Accused persons must always be advised of their rights as provided by law (that is, right against self-incrimination and right to legal counsel.)

**d. Identifying the Witness:**

- (1) **Military.** Must give his or her full name, grade, organization and station and a brief statement of duties currently performed.

- (2) **Civilian.** Must give his or her full name, grade (if applicable), organization (or firm) and location, and a brief statement of duties currently performed.

- e. **Personal Information.** This information such as social security account numbers or home addresses must not be solicited from the witness, or included in your report, unless necessary to identify the person.

- f. **Witness Identity.** The full identity must appear in at least three places in the report: in the transcript of the testimony, in the statement of "facts" or other sections where the witness is first referred to, and in the "recommendations" if any reference is made to the witness.

- g. **No Self-Incrimination.** UCMJ, Article 31(a) and

- (c), provide that no persons subject to the UCMJ may be compelled to incriminate themselves, or to answer any question, the answer to which may tend to incriminate them or is not material to the issue and may tend to be degrading.

- (1) While Article 31(b) and the additional rights discussed in chapter 9 may apply to persons who are accused or suspected of an offense, Article 31(a) and (c) apply to all witnesses.

- (2) The implications of this right must be fully understood by the investigating officer and must be carefully explained to the witness. As long as the witness is not actually suspected of any offense, the interview may continue.

- (3) If the witness seeks to take refuge in the Code, or in his or her constitutional rights, investigators must require a precise statement to this effect for the record. The witness must assert this right to each question he or she declines to answer and may not assert this right to a group of questions.

- (4) However, any development in the interrogation, or in the investigation as a whole, that makes this witness a suspect must be recognized. When this occurs, interrogation of the witness is governed by chapter 9.

- h. **Refusal to Answer.** If you feel that invoking Article 31 is invalid and the witness persists in the refusal, the matter will be referred to the commander or to higher authorities. They will require the witness to answer if the objection is not valid.

- i. **Penalty for Refusal.** The witness will then be warned of the penalty for refusal to testify. Witnesses may seek refuge in their constitutional immunity only for evidence that may incriminate or degrade themselves. They may not refuse to answer questions that would incriminate or degrade another person, even though they might want to avoid the answer.

- j. **Right to Counsel.** Witnesses may refuse to testify unless they can have counsel. Unless witnesses are thought to be personally involved in the matter being investigated, they should be informed that they have no right to counsel. In other situations, consult with the Staff Judge Advocate about the entitlement to counsel. In an investigation such as is contemplated here, testimony usually is taken only in the presence of the investigating officer, the witness, and the reporter.

- k. **Record Exact Words.** The exact words of the witness must be recorded by the reporter at the time the testimony is given. Do not have the transcript of the testimony prepared in rough draft for editing before final incorporation into the report. This technique violates every requirement of verbatim testimony and is highly irregular.

- (1) "Off-the-record" discussion is not permissible. If the witness states, "Well, off the record, it was like this," the reporter must fully record the answer and ignore the alleged "off-the-record" character of the evidence.

- (2) The manner of testifying is also important. The reporter must record all hesitations of the witness, corrections to testimony, motion of the head and hands, etc.

These should include gestures, shrugging of shoulders, and other manifestations by witness, such as "She did like this (held up hand)," "He went out there (points to door)," etc., if the gestures are significant.

**l. Discuss Credibility.** The credibility of witnesses has an important bearing on the testimony they offer and is of particular interest to the person who reviews the report. If you have any opinion or fact reflecting upon the credibility of a witness, state this in the report under the section titled "Discussion."

**m. Investigator as a Witness.** Don't overlook your own value as a witness. Record your impression of things you see, and include these statements as an exhibit in the report. Also, be alert to discover matters of record, documents, correspondence, and the like that have a bearing on the investigation.

**n. Kinds of Witnesses.** A distinction must be made between witnesses generally and persons whose conduct may come into question during the investigation. For the latter, the considerations in chapter 9 will affect the conduct of the interrogation. If matters prejudicial to others arise during an investigation, the investigating officer will immediately inform the persons concerned. This may be done either orally or in writing. The persons concerned will be informed of the exact nature of all such prejudicial accusations or allegations against them. They will be given full opportunity to defend themselves by their oral testimony, by the testimony of witnesses in their own behalf, or by written statements (sworn if practicable) of their own as they may desire to submit. Careful adherence to this procedure will prevent any subsequent plea by the persons accused that their rights were violated.

**o. Interviewing the Accused.** No investigation is complete unless the accused is interviewed and given a full opportunity to offer sworn evidence or submit a statement in his or her behalf. The accused may also introduce sworn evidence of any witness he or she may wish to summon. This is a fundamental requirement and is not waived except under unusual circumstances and then only when authorized by the appointing authority. If this person is not available for interview, submit the report; however, state that the report is incomplete and requires the person in question be given an opportunity to testify in his or her behalf.

**p. Testimony and Statement.** The person against whom an allegation has been made may be content with offering oral testimony. This must be recorded by the reporter and must be given under oath. If he or she desires that the testimony of witnesses be introduced in his or her behalf, try to limit this to the testimony of material witnesses.

(1) If the accused does not desire to give oral evidence, he or she will be informed of the right to submit a formal statement in writing. This statement should be sworn.

(2) If the accused elects to submit a written statement, you should fix a time limit for filing this statement.

(3) Often the person against whom an allegation has

been made will ask your advice as to whether sworn testimony or evidence of additional witnesses should be submitted. Remember that you are neither a judge, prosecutor, nor counsel for the defense, but an impartial agent of the appointing authority. You must scrupulously refrain from offering any advice and must tactfully explain your position.

4-9. A (added)

#### 4-9. Testimony of Absent Witness:

a. Often a lead is obtained that indicates the desirability of securing the testimony of a witness who is not available where the investigation is being conducted. If arranging a personal interview with the witness is impracticable by the time it is needed, you should obtain the testimony by a deposition or interrogatory.

b. The interrogatory must be mailed to the base commander requesting that replies to the questions be obtained from the witness under oath. As an alternative, send the base commander a statement of fact, or facts, to be determined, with a request that a suitable interrogation of the witness under oath be conducted by an officer designated for the purpose.

#### 4-10. Protecting the Identity of the Complainant.

Unless specifically authorized by the appointing authority, do not divulge to the person under investigation or any witness the source of the information on which the investigation is based.

#### 4-11. Conducting the Interview:

a. **Intimidation.** Avoid brow-beating a witness. It is far easier to lead than to force a witness. Investigators who shout and pound the table, or one who seeks to coerce or intimidate, will rarely obtain the information they seek. An unwilling witness presents little testimony of value. Also, evidence obtained under duress is always subject to challenge.

b. **Truthfulness.** Never accuse your witnesses. If you suspect that they are not telling the truth, you may discover this by careful questioning rather than by threats or accusations. If enough questions are put to the witness, falsehoods will generally be exposed.

c. **Conduct.** You are the representative of your appointing authority, and you have been assigned a responsible duty. This is no place for levity, and you must justify the confidence that has been placed in you. Furthermore, familiarity on your part does not inspire the respect of the witness.

d. **Evasiveness.** Hold witnesses to the question. Do not permit them to wander from the subject and present a mass of extraneous detail. Witnesses, on occasions, try to avoid giving a direct answer to a question by a reply that is either evasive or so indifferent that it is without intelligible application. Finally, complete statements must be required. Be prepared to hold them to the specific question and secure a direct answer.

e. **Inappropriate Questioning.** The witness must not be permitted to question you. It is your responsibility, not the interviewees, to obtain the facts on which to base

your report. Keep complete control. Do not abdicate your duties as investigator by permitting any witness to assume your role.

f. **Hearsay Evidence.** This evidence deserves some consideration. Generally, it is not admissible in a court of law. Nevertheless, it may have definite indirect value in the interrogation of witnesses by supplying valuable leads. For example, you may ask witnesses about their knowledge concerning a certain matter. In reply, witnesses may state that they have no personal knowledge of this but that, during conversation with John Doe and Betty Doe, they were given certain information. In this way, you secure the names of the two new witnesses who, when interviewed, may supply valuable direct evidence.

g. **Opinions.** Opinions by witnesses must also be considered. Although opinions, in themselves, are not evidence, they are of definite value in helping you to evaluate other evidence and to determine essential facts. Opinions are also of value in investigations that are not so much concerned with irregularities as with conditions. In this case, it is entirely proper to secure from witnesses a statement giving their opinions about a condition or situation. All statements of opinion must be shown in the record, particularly regarding expert testimony, if it comes from an expert witness.

h. **Voluntary Statements:**

(1) Before ending the interview, witnesses must have a chance to make any voluntary statement they may desire or to offer any additional evidence. Occasionally, you may inadvertently omit certain questions that would have elicited valuable information. Unless witnesses are allowed to make a statement of their own, they will have no opportunity to include this evidence in the record.

(2) Further, witnesses, when given the opportunity, may frequently offer explanatory or clarifying evidence concerning testimony they have already given that will help the reviewer in his or her evaluation. To encourage this, you should ask, "Have you any additional information to offer?" or "Do you desire to make any statement bearing on the evidence you have given?"

i. **Cautions.** At the end of every interview, witnesses must again be cautioned as to the official character of their testimony. They must also be reminded not to discuss the interview with any other person or answer any questions about it.

**4-12. Follow Up Leads.** Probably one of the most important and most frequently overlooked matters is the necessity to follow up leads. At the outset, you usually have the benefit of limited information. Starting with this, you must develop your leads.

a. Your first act is usually to interrogate the complainant to obtain all information he or she has. The complainant usually gives the names of a number of prospective witnesses and from these, you obtain additional sources of information.

b. If your report is to contain essential facts, you must diligently pursue all pertinent leads. At the same time, be on guard against following leads that are not relevant.

**4-13. Suppressing Essential Information.** Sometimes evidence is uncovered that, while not fraudulent, involves suppressing material information. These matters must be fully reported. For example, it was disclosed that an officer whose actions are being investigated was convicted of a felony before entering the service or was involved in discreditable actions or conduct. An examination of personnel files may have disclosed this information, but it was withheld when applying for a commission in the Armed Forces. If this information had been available, the commission would not have been granted. Although courts-martial are generally without jurisdiction in these matters, nevertheless it must be reported so that the proper steps may be taken.

**4-14. Perjury Versus False Swearing:**

a. HQ USAF sometimes receives reports from an investigating officer who contends that a military witness, during an interview, has been guilty of perjury in that, having been duly sworn, gave false testimony. This is erroneous. Perjury involves false testimony material to the issue given under oath in a judicial proceeding. Inasmuch as an investigation is not a judicial proceeding, false testimony given to the investigator by a witness does not constitute perjury under UCMJ, Article 131, but it does constitute false swearing. This is punishable as a crime under UCMJ, Article 134. For this reason, if you have any cause to doubt the veracity of a military witness whom you are about to interrogate, it is not proper to caution the witness as to the punishment that may be imposed for perjury. However, it is advisable to caution as to the punishment that is authorized for false swearing.

b. A civilian witness, however, who gives false evidence under oath to an investigator is guilty of perjury under 18 U.S.C. 1621.

**4-15. Failure To Testify.** If witnesses are reluctant to testify, it might be proper to read them 18 U.S.C. 4. This law provides that any person who knows about the actual commission of a felony cognizable by a court of the United States, and does not make this information known to the proper authority, may be guilty of misprision of felony. Negative misprision is the concealment of something known by one who is under a duty to reveal it. If the witness appears to be guilty of misprision or felony, consult the Staff Judge Advocate.

**4-16. Handwriting Analysis and Typewriter Identification.** Obtain assistance in these areas from the nearest AFOSI detachment.

**4-17. Obtain Complete Information.** Before leaving the scene of the investigation, carefully review your original directive and accompanying documents. Analyze the evidence to make sure that you have completely covered all phases of the investigation and have obtained the evidence necessary to prove or disprove the allegations.

4-13 (a)

19 November 1984

Schools

## ACADEMIC INTEGRITY

This regulation defines Air University policy on academic integrity. It applies to all Air University organizations.

### 1. Terms Explained:

a. **Academic Integrity.** Uncompromising adherence to a code of ethics, morality, conduct, scholarship, and other values related to academic activity.

b. **Group Work.** Assignments which permit, direct, or encourage individuals to work together in preparing verbal or written reports as specified by the Air University organization.

c. **Individual Work.** Assignments, examinations, or research efforts, as specified by each Air University organization in which the individual is expected to do his/her own work; that is, without collaboration of others.

d. **Lack of Academic Integrity.** Includes:

(1) **Plagiarism.** The act of appropriating the literary composition of another, or parts or passages of his/her writings, or the ideas or language of the same, and passing them off as the product of one's own mind. For example, copying verbatim without quotation marks is plagiarism as is use of a source's sentence structure and style with only minor word changes. The required method for giving credit to a source in written work is to use quotation marks and an accompanying footnote when quoting directly and a footnote when paraphrasing. In the case of oral presentations, credit must be given for direct or paraphrasing of direct quotes.

(2) **Cheating.** The act of giving or receiving improper assistance such as, but not limited to, copying answers from another's examination, using texts, notes, issue materials, or other references not authorized for examinations or other assigned work, knowingly permitting another student to copy one's writing assignments, speech materials, or answers from an examination paper; and collaborating with other persons on individual assignments except as specifically authorized.

(3) **Misrepresentation.** The act of making an assertion to intentionally deceive or mislead. Misrepresentation may

be an oral or written statement which is misleading or deceiving and meant to be so; for example, false reporting.

e. **Permanent Party.** All personnel assigned to Air University, including AFIT.

f. **Students.** The term "students" as used in this regulation includes United States and international military and civilian personnel attending USAF schools.

### 2. Responsibilities:

a. All students and permanent party personnel are expected to adhere to the highest standards of academic integrity. Failure on the part of any individual to practice academic integrity reflects discredit both on the Air Force and on the individual and will not be condoned within Air University. Individuals who violate this regulation will be subject to adverse administrative and/or disciplinary action. Cases involving military personnel subject to the *Uniform Code of Military Justice* may be handled as a violation of Article 92, UCMJ.

b. Each Air University organization will assure that this policy is fully understood by students and permanent party personnel. Any further implementing directives considered necessary by the commandant/commander of Air University organizations will be submitted to HQ AU/ED for approval before publication.

c. Suspected violations by students enrolled in AU nonresident/associate programs will be reported by the school commandant/commander to the student's commander for appropriate action. Documentation supporting the accusation and a request for a copy of the disposition of the charge will be forwarded with the report to the student's commander.

d. Alleged violations by Air University permanent party personnel will be reported to the individual's commander for appropriate disciplinary or administrative action.

Supersedes AUR 53-6, 2 April 1984. (See signature page for summary of changes.)

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OPR: EDV (Lt Col Lynville Taber)

Approved by: Col Eddie C. Norrell

Editor: Sara R. Weatherly

Distribution: E, X (AFISC/DAP, HQ USAF MPPE)



THOMAS C. RICHARDS, Lt Gen, USAF  
Commander

R. C. GRIFFIN, Lt Col, USAF  
Director of Administration

#### SUMMARY OF CHANGES

This revision deletes faculty board action under AFR 53-15 and AFR 11-31 (para 2a).

DEPARTMENT OF THE AIR FORCE  
Air Command and Staff College (AU)  
Maxwell AFB AL 36112-5542

ACSC REGULATION 53-10

28 October 1986

## Schools

### REVIEW BOARDS

This regulation establishes and describes the purpose, composition, and responsibilities of review boards for the Air Command and Staff College (ACSC) and applies to all faculty, staff, and students.

1. Purpose. ACSC review boards are designed to provide recommendations to the commandant regarding issues and events directed for their investigation.

2. Terms Explained:

a. Directors Review Board (DRB). A board composed of the directors/deans of operations (DO), curriculum (ED), associate programs (EP), and plans and administration (XP). The educational advisor to the commandant (CAE) and chief of evaluation (CAV) are nonvoting members. The board is chaired by the vice commandant and meets at the direction of the commandant or vice commandant.

b. Faculty Board (FB). A board composed of the directors/deans of operations (DO), curriculum (ED), associate programs (EP), plans and administration (XP). The educational advisor to the commandant (CAE), chief of evaluation (CAV), and a recorder (appointed by ACSC/CC) are nonvoting members. The vice commandant is the president of this board. If the vice commandant is unavailable, the senior-ranking director on the ACSC faculty assumes the position as president of the board. The board is directed to convene by the commandant. (Board members are assigned by ACSC/CC letter.)

3. Directors Review Board (DRB):

a. Specific Purposes:

(1) The DRB is designed to provide the commandant with an advisory body to research, analyze, and develop recommendations for ACSC/CC approval/action regarding any issue affecting the college.

Supersedes ACSCR 53-10, 1 July 1985. (See signature page for summary of changes).

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Approved by: Lt Col R. H. Lewis

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(2) The DRB is also designed as the primary review board for the student evaluation system (reference ACSCR 53-7). The DRB makes recommendations to the commandant regarding students designated as "marginal performers" (reference ACSCR 53-7).

(3) Additionally, the board recommends approval of the list of students designated as Distinguished Graduates and Top One-Third (reference ACSCR 900-4).

b. Scope of DRB action.

(1) The DRB acts solely as a review and recommending board for the commandant.

(2) DRB recommendations regarding students designated as "marginal performers" may include:

(a) Continuation in course.

(b) Specific action to correct marginal performance in an evaluation area (examinations, research, or seminar performance).

(c) Convening of a faculty board to determine a student's continuation in ACSC.

(d) Administrative disenrollment.

(3) Any faculty member may request a DRB review. The request is forwarded to the appropriate director/dean and then to CAV and CV, in turn. The request will include rationale for DRB action and background/reference material.

c. Responsibilities:

(1) Chief of Evaluation:

(a) At the direction of the convening authority, notifies DRB members of the time and agenda of meeting.

(b) Provides DRB members with background information or data, as required, before the meeting.

(c) Provides an officer to act as recorder for the meeting.

(d) Notifies EDP of the impending meeting and reserves an appropriate meeting location.



(e) Drafts, coordinates, and distributes the DRB meeting minutes, as required by the vice commandant or acting chairperson, to include DRB recommendations and an ACSC/CC approval attachment.

(2) DRB Chairperson:

(a) Coordinates the discussion and development of recommendations by the DRB.

(b) Signs the coordinated DRB meeting minutes and forwards them to the commandant for approval.

4. Faculty Board (FB):

a. Purpose and scope of FB action:

(1) The FB convenes as a board of officers to make recommendations concerning a student's continuation in ACSC.

(2) The board is convened in accordance with AFR 11-31 and/or AFR 50-5/AU Sup 1 and assumes the administrative authority detailed in these regulations.

(3) The board will make findings of fact and recommendations for ACSC/CC regarding the continued enrollment of the student.

(4) Faculty board findings are forwarded to AU/CC, through HQ AU/XP, for final review and approval.

NOTE: Administrative disenrollment is an alternative to faculty board action (reference AFR 50-5 and AFR 50-5/AU Sup 1). HQ AU/XP can provide guidance regarding cases where administrative action is appropriate.

b. Responsibilities:

(1) The president:

(a) Reviews AFR 50-5/AU Sup 1 and AFR 11-31, as applicable, and ensures all requirements of these regulations are satisfied, including:

1. Coordinating with HQ AU/XP and HQ AU/JA before initiating FB action if FB action is for disciplinary reasons (includes HQ AU/JA advice as to whether the provisions of AFR 11-31 apply).

2. Notifying the student involved of his/her rights under the applicable regulation and providing a faculty member to assist the student in making arrangements for legal support (if provisions of AFR 11-31 apply).

(b) Signs coordinated copy of board proceedings, and forwards it to the commandant for approval.

(2) The recorder:

(a) At the direction of the president, advises board members of meeting time and location.

(b) Prepares and distributes copies of proposed agenda, including reference material in advance of the board meeting.

(c) Notifies EDP of the impending FB meeting and reserves an appropriate meeting location.

(d) Performs all duties in accordance with AFR 11-31 (if applicable) and/or AFR 50-5/AU Sup 1.


(e) Transcribes/summarizes board proceedings in accordance with AFR 11-31 (if applicable) and/or AFR 50-5/AU Sup 1.

(f) Coordinates transcript/summary of the FB meeting with board members and HQ AU/JA representative.

(g) Provides coordinated transcript/summary, findings, and approval attachments to the president for signature and forwarding to ACSC/CC.

5. Disposition Instructions. Original copies of faculty board proceedings are disposed of in accordance with AFR 12-50, volume II.

FOR THE COMMANDANT

  
BOBBIE C. SMITH, SMSgt, USAF  
Chief of Administration

SUMMARY OF CHANGES This revision eliminates requirement for Distinguished Graduate Selection Committee and changes office symbols.

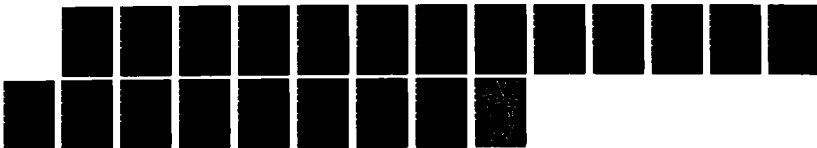
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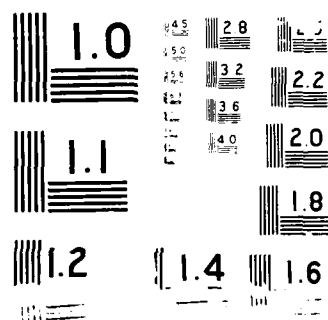
PLAGIARISM AND PROSECUTION: A NEW APPROACH AT AIR  
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# APPENDIX

TWO

Recommended Changes to Applicable Regulations

Appendix 2: Recommended Changes to Applicable Regulations.

A. Change to AFR 50-5, 1 December 1986. At present, paragraph 1-45 d (2) (b) provides for faculty boards only in cases of "academic deficiency, flying deficiency, manifestation of apprehension, military training deficiency, lack of adaptability and related matters." To provide a clearer basis for convening a faculty board to hear allegations of plagiarism, the wording of the paragraph should include "lack of academic integrity" after the word "adaptability."

B. Changes to AU Supplement 1, AFR 50-5, 22 February 1985. As indicated by brackets below, I recommend the following changes be made to AU Sup 1:

1. Paragraph 1-42 c (11). "AWC and ACSC will advise HQ AU/XP [and HQ AU/JA] before initiating [administrative] action, other than faculty board action, which could result in the disenrollment of a PCS student from their programs." These changes are needed to clarify the procedure and notify JA, and are derived from discussions with Maj Sheppard of ACSC/CAV.

2. Paragraph 1-43 b (5). "Faculty board membership may include as nonvoting members, necessary advisors including an educational advisor, [delete legal advisor] and such other advisors as deemed appropriate. **These nonvoting advisors serve as technical experts and need not be present for the board proceeding unless specifically called.**" This change is based on lessons learned in prior board proceedings. The legal advisor should not be classed with other nonvoting advisors since his presence is required by AFR 11-31.

3. Paragraph 1-43 c (3) (b). "If the commandant determines the provisions of AFR 11-31 are applicable [and the board recommends disenrollment from the school] transcribe the board proceedings verbatim. [When the board recommends retention in the school, the commandant may, in his discretion, direct a summarized record be prepared, containing the persons present or absent, authority for convening a board, and copies of all exhibits.]" This change will expedite the transcription of cases not recommending disenrollment and reduce the cost of preparing and reproducing the records, which has been estimated at \$500 for each of the four cases cited in this paper. (Interview with court reporter: 4 Sep 87). It will also align the Supplement with a recent change to AFR 39-10, governing administrative discharge boards, which authorizes this type of summarized record. (HQ AFMPC msg, R122105Z Nov 87).

Given that the board recommendations are not binding on the commandants, in some cases when retention is recommended, they may still desire a verbatim transcript to reconsider the findings and recommendations of the board. This change will preserve the commandants' prerogative to direct this.

C. Changes to AUR 53-6, 19 November 1984. The definition of plagiarism at paragraph 1 d (1) and the punishments at paragraph 2 a should be revised as indicated by brackets:

1. Paragraph 1 d (1). 'Plagiarism. The act of appropriating the [ideas or] literary composition of another] [~~delete:~~ or parts or passages of their writings or the ideas or language of the same,] [with intent to pass] them off as the product of one's own mind [and without giving proper reference to them.] [~~Delete:~~ 'For example, copying verbatim without quotation marks is plagiarism as is use of a source's sentence structure and style with only minor word changes.' ] [Insert: Intent may be established by the totality of the circumstances and evidence presented. Where the student does not intend to pass off another's work as their own, but improperly documents substantial portions of their work, they may be subject to nonjudicial or administrative action. For purposes of this definition, a *quotation* is a passage employing another's words exactly as written. A *paraphrase* is a restatement of another's ideas in one's own words, with the original and the paraphrase about equal length. A *summary* is a condensation of a longer passage written by another.] The [correct] method for giving credit to a source in written work is to use quotation marks [or block indentation (for passages over five lines)] and an accompanying [reference by number or] footnote when quoting directly. [Use the reference by number or footnote when paraphrasing or summarizing. Where an entire section, chapter, attachment, etc., is used verbatim from a source, place a statement at the bottom of the first page of that portion to indicate: "This section is quoted from xxx, pages xx to xx." ] In the case of oral presentations, credit must be given for direct [~~delete:~~ or paraphrasing of direct] quotes [and paraphrased passages. For more detailed instruction, refer to your particular school's writing guidelines.]'

The sources of these recommended changes are as follows: inclusion of intent (AU/JA letter: 19 May 87); definitions of quotation, paraphrase, and summary (AFSC Student Guidance, Vol 1: 18); and citation of entire section and block indentation (ACSC Research Bk:69).

These changes are needed to reduce confusion in both the faculty and the students as to what constitutes plagiarism. In addition, the writing guidance should be revised as in appendix 3. These changes will narrow the scope of the faculty board's deliberations to the issue of intent and will permit them to

find intent based on the totality of the circumstances, rather than allowing the case to be decided by the presence or absence of an admission by the respondent.

2. Paragraph 2 a. The section describing punishments should be amended as indicated by brackets. "Individuals who violate this regulation will be subject to adverse administrative [action including disenrollment from school and discharge from the service] and/or disciplinary action [including punishment under Article 15, UCMJ.] This clarifies the fact that a two track approach may be taken.

D. Changes to ACSCR 53-10, 28 October 1986. Two paragraphs of this regulation covering faculty boards should be revised as indicated by brackets below:

1. Paragraph 2 b. "Faculty Board (FB). A board composed of [the student squadron commanders of the three squadrons other than the respondent's] [delete: directors/deans of operations (DO); curriculum (ED); plans and administration (XP).] The educational advisor to the commandant (CAE), chief of evaluation (CAV), and a [delete: recorder; insert: legal advisor] are nonvoting members. [Except for the legal advisor, these non voting advisors serve as technical experts and need not be present unless specifically called.] [Delete: The vice commandant is the president of this board. If the vice commandant is unavailable, the senior ranking director on the ACSC faculty assumes the position as president of the board.] The board is directed to convene by the commandant. [( ) Board members are assigned by ACSC/CC letter. ( )]"

These changes are designed to balance the need for an informed panel against the need to avoid the appearance of command influence. The change to the nonvoting members is based on lessons learned from prior boards that their presence is not required at the entire hearing.

The recommended change in the board composition reflects the provisions of AFR 50-5 which permits "any combination of commissioned officers . . . provided that each military member outranks the student whose case is before the board." (para 1-45 c). It also follows AFR 11-31 which requires that the panel members be officers, but does not otherwise specify positions from which the officers must come.

More importantly, the shift eliminates a number of difficulties inherent in a panel of senior faculty members. In a close-knit academic community, it is hard to avoid knowledge of a case that may subconsciously prejudice the panel member, particularly those in positions that review and evaluate papers. Additionally, if the panel is comprised of the entire senior leadership of the school, there is no one available to tend to business during sometimes extended hearings. Finally,



this shift avoids the appearance of command influence that may attach to a panel comprised almost entirely of senior officers who are rated by the commandant. There has been no allegation of any impropriety of any kind in the hearings to date, but it is the better part of wisdom to avoid even the appearance. Squadron commanders are sufficiently senior to exercise impartial judgement, removed enough from the evaluation and review chain to be free of prior knowledge of the cases, and sufficiently removed from the senior leadership positions to avoid the appearance of command influence.

2. Paragraph 4 a (3). 'The board will make findings of fact and recommendations for ACSC/CC regarding the continued enrollment of the student. **[In cases of plagiarism, the board will make a specific finding as to each of the elements in the definition contained in AUR 53-6, including intent to pass off the works of another as the respondent's own.]**' This addition will clarify the deliberations of the panel and avoid some of the confusion created by the unwieldy definition of plagiarism previously in effect.

This concludes Appendix 2 dealing with changes to applicable regulations. Each modification is intended to clarify and simplify the handling of plagiarism cases.

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# APPENDIX

## THREE

### Recommended Changes to ACSC Research Handbook

### Appendix 3: Recommended changes to ACSC Research Handbook

A. At present, there are three separate sources of information on plagiarism and citation forms available to ACSC students: the *Research Handbook, Tongue and Quill* (AFP 13-2), and the *Tongue and Quill Workbook*. Unfortunately, they are not dovetailed together and could lead to confusion. For example, the definition of plagiarism in the *Workbook*, is from *Webster's New International Dictionary*, while AU Regulation 53-6 uses a legal definition from *West's Law Dictionary*, and the *Handbook* hardly mentions it. In addition, the *Tongue and Quill Workbook* uses the potentially confusing term "questionable paraphrasing" without first clearly defining what is meant by "paraphrasing."

B. The most comprehensive source is the *Research Handbook*, beginning at page 67 with a section entitled "A Style Guide." For that reason I will shape my proposed changes around it and recommend that the resulting ten pages (eight original plus two of changes) be substituted for the four pages in the *Tongue and Quill Workbook* as the definitive guidance for ACSC.

C. Delete the first paragraph of "A Style Guide" and insert the following at line 1.

"There is a dynamic tension between the operational world, where sources of information are rarely cited, and the academic world, where they must be. In the operational world we are routinely admonished to reuse letters, booklets, and briefings to save time and 'not reinvent the wheel.' But in the academic world, a person's ideas, research, original thought, and analysis are their stock-in-trade. Taking them without credit is theft.

And there's another difference. At work, your performance was not subject to graded evaluations assessing your personal writing skills, nor was it likely to be published. In this school it is. So if you don't properly cite, your evaluator can't give a true assessment, and your public may be annoyed. Lastly, 'out there' it didn't matter if you didn't know how to cite, but 'in here' it can be a career ending event.

In 1987, three of your fellow officers went before Faculty Board hearings for plagiarism. The record of these hearings proves this stuff can be aggravating.

The good news is that all you need to know to stay out of trouble is contained in the next ten pages and there are a lot of examples. We'll first define plagiarism, then give some

basic rules of thumb on how to avoid it, and finally illustrate specific examples of proper citation.

AUR 53-6 defines plagiarism as 'the act of appropriating the ideas or literary composition of another with intent to pass them off as the product of one's own mind and without giving proper reference to them.' Put another way it is literary larceny. It differs from inadvertent citation error in that the plagiarist makes a conscious attempt to hold out the work as their own, while the person who cites incorrectly is either ignorant of the proper citation formats or negligent in ensuring they are used.

When you stop to think about it, none of those descriptors are very complimentary, and they can all lead to serious administrative or disciplinary consequences. So how do we avoid it?

We start with definitions. A **quotation** is a passage employing another's words verbatim, exactly as written. A **paraphrase** is a restatement of another's ideas in one's own words, with the original and the paraphrase about equal length. A **summary** is a condensation of a longer passage written by another (AFSC Student Guidance, Vol 1, No. 6S40, Aug 87). Then we study the following five rules, adapted from James D. Lester's book, *Writing Research Papers*, 3rd ed. (Glenview, Ill.: Scott, Foresman and Co., 1980) at page 49.

'1. Acknowledge borrowed material within the text by introducing the quotation or paraphrase with the name of the authority from whom it was taken.'

'2. Make certain that paraphrased material is written in your own style and language. The simple rearrangement of sentence patterns is unacceptable.' If, in your paraphrase, five consecutive words (except names, titles, etc.) are the same as the original, use quotes around them. If your paraphrase exceeds five lines, cite every fifth line, so the reader can tell what is yours.

'3. Enclose within quotation marks all quoted materials,' except passages over five lines which are block indented without quotes. When quoting an entire section, chapter, attachment, etc., place a covering statement at the bottom of the first page of that portion to this effect: 'This section is quoted from xxxx, pages xx to xx.'

'4. Provide a [citation, either] footnote [or reference by number] for each borrowed item,' including quotations, paraphrases and summaries, immediately after it occurs in your text.

'5. Provide a bibliography entry for every book, [source] or magazine that appears in the [citations]' under the 'references cited' section of the bibliography and for any other materials under the 'related sources' section.

No doubt, you have already reduced this list to a mnemonic rule of fives:

1. If it's verbatim, quote it.
2. If the quote exceeds five lines, indent it.
3. If it's a paraphrase, reword it.
4. If the reword includes five consecutive words verbatim, quote them.
5. If a paraphrase exceeds five lines, cite it every five.

That's the drill. Now here it is in more depth.' End Insert.

# APPENDIX

## FOUR

### Faculty Guide to Handle Suspected Plagiarism

#### Appendix 4. Faculty Guide for Handling Suspected Plagiarism

A. You're a faculty member reviewing a completed written project and beginning to feel that the writing style, the citations, and the bibliography don't match up. You suspect plagiarism, but aren't exactly sure what to do. This guideline will walk you through the process and clarify most questions. For more detailed information, you may want to consult EDC or the base legal office.

B. This guideline is derived from a package originated by Lt Col H. A. Staley at ACSC, and the faculty guidance used at West Point. It incorporates lessons learned from three recent cases of plagiarism at ACSC.

C. **Actions to be taken as a faculty advisor to prevent plagiarism prior to final submission of a paper.**

1. As a faculty advisor to student writers, review drafts for areas that might indicate sloppy documentation, ignorance of proper citation forms, or poor editing. In particular, look for:

- abrupt changes in style,
- awkward transitions,
- the use of archaic words,
- unusually erudite writing style,
- differing methods of citation,
- long passages without citations,
- citations always at the end of paragraphs, and
- citations that do not relate to the text.

If you discover these in a paper you are advising on, or if it just doesn't look right, refer the student to AU Reg 53-6, the writing guidelines, and EDC to be sure they know the rules.

2. You are not obliged to source check the project, hold the student's hand, or edit their work. Just refer them to the proper source if you are concerned they are unaware of citation procedures.



3. When the project is submitted in final copy, your advisory duties regarding proper citation are over.

**D. Actions to be taken as an evaluator if you suspect plagiarism after the final submission of the paper.**

1. Perform a source check, comparing the citations in the paper with the source and looking for the items listed above.

2. If sources are not properly cited, photocopy two or three instances showing the original source and the borrowed verbiage for use by EDC. DO NOT DISCUSS THE MATTER WITH ANYONE OTHER THAN EDC, INCLUDING THE STUDENT. The student may need a rights advisement and professional courtesy dictates that people without a need to know be excluded from the matter. Also, those who occupy designated positions on the faculty board should make every effort to excuse themselves from discussions of the case to preserve their impartiality.

3. Complete the grading process, *except for assigning a final grade*, and bring the original paper, the evaluation, and the examples to EDC.

**E. Actions to be taken by EDC and the Command Section.**

1. EDC will make a preliminary assessment whether the citation errors are minor mistakes such as careless documentation, typographical errors, computer misprints, and the like, or are substantial enough to warrant further investigation, and will handle the process from here.

2. If the citation errors appear to be insubstantial errors, EDC will make a memo for record to that effect and forward the memo to the vice commandant (ACSC/CV) with a recommendation that it be handled without further investigation.

a. If CV decides it requires further investigation, go to step 4 below. If CV concurs that the errors are minor, he may decide to drop the matter entirely or initiate a letter of counselling, admonishment or reprimand at the appropriate level. Upon deciding, CV will refer the matter to the squadron commander to counsel the individual.

b. The squadron commander's counselling should be the first time the individual is approached and should give them the opportunity to explain their actions. A rights advisement should be given if the CV decides to take any administrative action. If the member admits intent to pass off another's work as their own, the admission is usable in possible future proceedings, and the case should proceed to step 4.

c. After the counselling session, assuming no admissions by the member, they will be directed to correct the paper, and EDC will return the original of the paper to the normal repository, and will send a copy of the memo to the eval-

uator to consider in assigning the final grade.

3. If, on the other hand, the errors appear to be substantial or indicate intentional passing off of another's work, EDC will gather the preliminary evidence from the evaluator, seek to establish the extent of the problem, and present a memo for record to ACSC/CV outlining the specifics and recommending initiation of a formal investigation under AFR 120-4. At this point EDC will secure the paper as possible evidence in a proceeding and ensure no marks are made on it.

4. If ACSC/CV concurs with the finding of substantiality, he will recommend the commandant (CC) appoint an investigating officer (IO) under AFR 120-4, para 1-2, with instructions to address the element of intent and make specific findings based on any admissions or circumstantial evidence in the case, and to make recommendations on the appropriate forum to hear the case (para 1-2 e). The IO should be given the Investigating Officers Guide (appendix 5), with specifics on how to conduct the investigation.

5. The investigating officer will consult EDC, the legal office, and the squadron commander before interviewing the member, to be fully informed on the case. After giving the member a rights advisement, he will seek specific information pertaining to intent and will submit his report to CV in ten days. The IO should use a copy of the paper, rather than the original to show which portions are improperly cited.

6. Based on the investigating officer's report, CV will prepare a recommendation to CC as to which of the two tracks to pursue: faculty board for plagiarism if intent is shown, or administrative/nonjudicial action for dereliction if it is not.

a. If the evidence indicates no intent to pass off another's work as one's own but there are substantial portions of poorly documented or improperly cited work, CC may choose to address the matter in a nonjudicial forum, or give an oral or written counselling, letter of admonishment, or letter of reprimand. In the nonjudicial forum, the squadron commander would read the officer the charges and receive the evidence, and ACSC/CC would administer punishment, as is permitted by AFR 111-9, para 1 (5), to allow ACSC/CC latitude in administering the case.

b. If, on the other hand, the investigating officer finds clear indications of intent, CC should refer the case to a faculty board for a thorough analysis of the evidence. The indications of intent may include admissions by the member or such circumstantial evidence as large tracts lifted without quotations or reference, a typist's statement that the draft was a photocopy of a book, or unexplained, abrupt changes in writing style without citation.

c. If the case is referred to a Faculty Board, the

panel will make findings of fact and recommendations on disposition of the case regarding disenrollment. Upon conclusion of this proceeding, CC may choose to initiate discharge proceedings against the officer under AFR 36-2.

7. After the case is heard in either a nonjudicial forum or a faculty board, the paper will be assigned a final grade and the student advised on reaccomplishment requirements. Depending on the outcome, ACSC/CC may choose to comment in the student's training report.

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# APPENDIX—

## FIVE

### Plagiarism Investigating Officer's Guide

## Appendix 5: Plagiarism Investigating Officer's Guide

You have just been appointed to investigate an allegation of plagiarism using AFR 120-4 and are beginning to feel uncomfortable about your understanding of the rules of citation and the offense itself. This guidance package is designed to inform you on the applicable regulations, the proper investigative procedures to follow, and the elements of the offense.

The governing regulation is Air University Regulation 53-6, a one page policy statement on academic integrity. Paragraph 1d(1) defines plagiarism as: "The act of **appropriating** the ideas or literary composition of another **with intent** to pass them off as the product of one's own mind and **without giving proper reference** to them" (emphasis added). Your investigation will focus on gathering whatever evidence is available to prove the three indicated elements for possible referral to a faculty board, or nonjudicial action such as letter of reprimand or Article 15. Of the three, the element of intent is most difficult and will be addressed below.

The investigation will be conducted along the lines of AFR 120-4, the Inspector General regulation which vests authority in commanders to investigate circumstances in their command. However, this will be an "inquiry" under the regulation, since some of the more technical requirements of the full blown "investigation" in the regulation are not applicable to this type of case. Paragraphs 2-6, 4-8, and 4-11 explain your duties as an investigator, how to examine witnesses, and how to conduct the interviews.

Your investigation report will follow the format prescribed in AFR 120-4 and you will conclude with a finding of fact as to each of the three elements, and a recommendation to the vice commandant as to disposition of the case. In making your recommendations, apply a "two track" approach, with one track for cases with no evidence of wrongful intent, and another track for cases with either circumstantial evidence or admissions of wrongful intent. Further explanation of the "tracks" is given below.

The "standard of proof" you will use in the inquiry is called "preponderance of the evidence." In simple terms, this means that you believe that it is more likely so, than not so, that a thing happened, i.e., about a 51% certainty. It differs from that standard of proof used in a court-martial which requires juries to be convinced "beyond a rea-

sonable doubt" that a thing occurred. The *preponderance* of the evidence is all that is needed, not the "overwhelming weight" of the evidence -- just a simple majority.

The concept of "intent" can be confusing. It exists to protect us all from being criminally liable for inadvertent mistakes. "Intent," in a plagiarism case, is not proved by the mere presence of incorrectly cited passages. Other hypotheses such as typist error, ignorance of proper citation formats, or computer malfunction could explain the improper citation. In these instances, the writer might be negligent in proofreading, but not a plagiarist, since there was no intent to pass off another's work as his own. Your challenging task is to determine the member's true intent.

Begin by comparing the paper with the cited sources to determine the extent of citation error. Then consult the legal office for any questions about AUR 53-6 and AFR 120-4. Next, notify the member's commander and then interview the author. Finally, talk to the typist, the advisor, the sponsor, and the faculty instructor to determine the person's level of writing ability and any circumstances that may elucidate their intent.

Consider interviewing the author as follows:

1. Read his rights under Article 31, UCMJ.
2. If he requests a lawyer or decides to terminate the interview at any time, immediately stop, and consult the legal office. If he agrees to the interview, continue with:
3. Are you aware of the AU policy on plagiarism?
4. Did you read the student materials on plagiarism?
5. Did you read and sign the statement of understanding plagiarism prior to submitting your paper?
6. How do you define plagiarism and paraphrasing?
7. Did you intend to pass off another's work as your own? (Questions were derived from AU/JA advice).

If the author denies intending to pass off the work as his own, be aware that various kinds of evidence can establish intent. While it may be shown by **direct** evidence, such as an admission, the typist's instructions, or notes in the rough draft, it may also be shown by **indirect** evidence, such as wholesale lifts of paragraphs without any reference, removal of texts from the library to deter source checkers, and structural arrangements in the paper itself, such as the same format or analysis without reference to the original.

To assist you in detecting possible plagiarism, observations of a previous investigator should be helpful:

Detection generally results from a detailed reading of a piece in search of changes in writing style; abrupt transitions; [and] the use of archaic and obsolescent words and phrases . . . . Documentation is accomplished by reading backwards from a reference and comparing both the referenced and unreferenced material of the writer with that of his source. Plagiarism generally involves the use of only a few sources, though the footnoting and bibliography may be extensive. Footnotes often take the analyst to a source other than the one actually quoted." (IO Letter, dated 30 Apr 80).

Other telltale clues include unusually erudite writing styles, and unusually low numbers of citations. If any of the above examples arise, check the cited source a few pages on either side of the reference.

These indicators may add up to sufficient circumstantial evidence to prove intent on the writer's part. Then again, you may just find ignorant, typographical, proofreading or editing errors. Based on all the information you are able to gather, make the findings of fact and a recommendation as to disposition.

If you are not convinced by a preponderance of the evidence that the officer intended to pass off the works of another as his own, your response would be on the first 'track' and might range from recommending no punitive action through oral counselling, written counselling, letter of admonishment, and letter of reprimand. In the event of numerous, flagrant errors of citation, but no evidence of wrongful intent, Article 15 action may be appropriate for dereliction of the duty to cite properly in violation of Article 92, UCMJ.

The second 'track' is recommended when you find evidence of wrongful intent, either through circumstantial evidence or through an admission by the officer. When you think it is more likely that the person intended to pass off the words or ideas of another as their own, recommend the case be presented to a faculty board to consider disenrollment from the school. Under some circumstances, the officer may also face discharge proceedings in addition to the administrative or nonjudicial action taken by the school.

This guidance should assist in preparing a well-reasoned recommendation for the commandant in cases of suspected plagiarism. Questions may be directed to EDC, the base legal office, or Headquarters AU/JA.



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